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Business Recovery and the Housing Program in Great Britain

By HAROLD BELLMAN, M.B.E., J.P.*

IF I may adapt a well-known poet, a touch of economic history makes the whole world kin. By this I mean, if we look back over the economic development of our two countries since the war, we have obviously experienced much in common; we have shared something of the same peaks of prosperity and same valleys of depression, though not in precisely the same degree or at exactly the same times. Again, our mental attitudes have varied somewhat, I think, in regard to our good and bad fortune. For instance, we in Britain never entertained the supreme confidence which marked your reaction to your "roaring" prosperity of 1929; and, on the other hand, I doubt whether we ever felt in the midst of our severest crisis quite so despondent as you were in, say, 1933.

The distinction is important, yet it is not easy to draw any useful moral. Obviously you are a "young" country, with amazing mental energy and marvellous natural resources, and this provides a solid enough foundation for your confidence in times of prosperity. But your bearing in depression is more difficult to analyze. I am reminded, however, of a country clergyman in England who went to his bishop with some parochial troubles. As the clergyman was plainly perturbed, the bishop sought to reassure him with these parting words: "Don't worry, Mr. Blank; remember your Church has stood for 800 years." It may be that as an "old" country we have an inherently developed sense of the rhythm of economic fortune and certainly we are inured to the regular procession of boom and slump, though I should hasten to disclaim 800 years' experience of the industrial phase of the trade cycle. Indeed, some of our observers are going so far as to say—and perhaps not without justification—that we have now become too "trade-cycle-conscious." As a result, we cannot enjoy prosperity without the panic thought of the depression which is round the corner, although clearly this might have the merit of cutting both ways. Whatever the contemporary difficulties, however, the long-term forces of economic prog-

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An address delivered at the School of Commerce, Northwestern University, May 3, 1938.

ress are strong and presumably in both countries we shall eventually take this problem in our stride.

With this preface—I hope it will not be interpreted as a homily—I will return to my main theme, which concerns certain aspects of the economic development of post-war Britain. In the most rapid survey, we can easily distinguish two fair-sized peaks and one pre-eminent peak, together with at least two considerable troughs. In 1920–1 we were carried to a boom on the crest of the wave of war-time inflation and its aftermath. It was unquestionably the most artificial of our post-war peaks. The inevitable corrective quickly followed, but this was more than an ordinary depression. For the first time Britain was face to face with the realities of a changed world. With a large part of our pre-war industrial economy built up on the basis of an active export trade, we discovered in the light of grim experience that many of these markets had permanently vanished. Here was the origin of the acute depression in our great basic exporting industries, which ultimately assumed a more dramatic shape in the emergence of our depressed areas. We were no doubt less energetic and enterprising than we should have been in attacking this problem and hence the colorable notion of our "decadence" which obtained currency at this period. This trough, then, was difficult enough, yet by degrees we climbed up to a fair-sized peak in 1929, despite the continuing depression in our export trades. The percentage of our unemployed was reduced to less alarming proportions and our national income showed an encouraging expansion.

Yet our fundamental difficulties remained and indeed had been intensified by what is now widely regarded as our premature return to the gold standard. Moreover, the cycle turned, precipitated by the catastrophic fall in world prices, and clearly we were in a far from favorable position to withstand depression. Furthermore, the situation was aggravated by the financial policy of a left-wing government which was largely judged, rightly or wrongly, to be ill-advised. This was a precursor, on a restricted scale, of the now not unfamiliar dilemma which confronts left-wing governments in regard to finance; for while their financial policy presupposed active trade, it was in itself a retarding factor. Thus finance has been well described as the Achilles' heel of reforming governments. Obviously this is one of the major problems of the modern world, since we must suppose that in the democracies which remain the electoral pendulum will periodically swing from one side to the other; and, accepting this, we must devise a technique which will allow the left—I nearly said "a run for its money," but it should perhaps be "a run for other people's money"—scope for its distinctive policy without unduly dislocating general economic activity. If it is objected that these are two fundamental incompatibles, this only adds to the difficulty. At any rate, it is a problem that will not be solved by an epigram, but it should not on that account be shirked if we wish to preserve democracy.

Returning to my narrative, the fall in prices, an unbalanced budget, an unfavorable balance of international payments, the collapse of European finance and so forth gradually reached a climax in the autumn of 1931, which was dramatized by our being forced off the gold standard. Here, then, was the second of our troughs, if this is not too mild a word for the declivity down which we tumbled. Unemployment was widespread and the national income fell, but

less proportionately than in your own case. The degree of our economic ill-health, however, was apparent, but as an initial step we put in power a broadly-based National Government and appropriately armed it with a "doctor's mandate." I do not pretend to be the exceptional person who can in practice confidently delimit the frontier between politics and economics; moreover, I imagine that in so far as the frontier can be drawn at all it would not follow precisely the same line in any two countries. When I say, therefore, that this was a basic factor in our subsequent recovery, you will appreciate that I am referring strictly to British conditions. It certainly provided a foundation of confidence, that indefinable and elusive, yet fundamental, prerequisite of a high degree of economic activity. But the Government had more than a good bedside manner; they prescribed a course of treatment, which included the restoration of the national finances on a sound basis, a flexible monetary policy, the imposition of a tariff, and so forth.

Thus the Government had, so far as tradition allowed, played their part—and more than played it—in creating the conditions favorable to economic revival; the next step rested with the business community. I should perhaps make this point clear, because it is sometimes assumed that the Government initiated a large-scale housing output, which gradually assumed boom proportions and thus led to recovery. So far from this being a true description of the origin of the housing boom, the Government in the early days of the depression actually *discouraged* local authorities—the only avenue through which they could exercise direct influence—from undertaking all except urgent building. For the building boom which by common consent was the backbone of our recovery was initiated entirely by private enterprise, though by a private enterprise which was benefiting from the favorable *basic* conditions which the Government had undoubtedly established.

What are the significant facts of this boom and its antecedents? In a subject with such ramifications I can select only leading points rather than provide a fully-documented history. The opening chapter relates to the period immediately succeeding the Armistice. With a vast body of soldiers—often newly married—returning to civilian life, we were confronted with a chronic, I might almost say a desperate, housing shortage. The private investor hitherto mainly supreme in the provision of housing accommodation, refused for adequate reasons to accept his traditional responsibility. Yet such was the urgency of the need for houses that something, almost anything, had to be done. It was for this reason that our local authorities and the Central Government entered the housing field on a large scale for the first time. The actual procedure was that the local authorities themselves were encouraged to build houses, with the assistance of subsidies received from the Central Government; and the Government also provided subsidies for certain houses erected by private enterprises. Initially, the operations of the local authorities were no doubt important in providing a stimulus, and the subsidies could be justified within limits, but they were always expensive and often wasteful. By laborious stages output in England and Wales reached an average of nearly 200,000 houses per annum in the few years preceding the crisis of 1931. At this point the first chapter may for practical purposes be closed. The emergency measures and expedients were falling into the back-

ground. The local authorities building, as I have said, was discouraged after the crisis except in urgent cases; the conditions under which subsidies were granted had been tightened and subsidized building was becoming less important. Such was the general situation when the "economic blizzard" of 1931 was at its height.

The next chapter, which embodies the story of the boom, begins from this stage. The first point to emphasize here is, I think, that private enterprise, largely but not quite entirely without subsidies or financial assistance of any kind, was now almost completely in possession of the field so far as *normal* housing needs were concerned. Despite the crisis and the disorganization which ensued, private enterprise in house-building was far from demoralized. Thus output actually increased in 1931 as compared with 1930, while there was also an increase, though only fractional, in 1932 as compared with 1931. From then onwards private enterprise increasingly dominated an increasing range of output, and within a year or two of the crisis subsidies to private enterprise were practically abolished. Bearing this in mind, we can trace the vigorous upward course of output during the period. Thus in 1931 and 1932 output totalled just over 200,000 houses per annum. The next year, 1933, saw a marked improvement, with output at 267,000; in 1934 there was a further increase to 329,000, a very slight setback in the ensuing year, followed by a new record of 346,000 in 1936. These, then, were the dimensions of our boom and the circumstances in which it originated. Glancing backwards, 3⅓ million houses were built in England and Wales between the Armistice and March 31, 1937. Of this number nearly one million —or just over one quarter—were provided by local authorities, in nearly every case with state assistance. The balance—or 2,400,000 houses—were erected by private enterprise, of which just over 400,000 received a subsidy, leaving nearly 2,000,000 built without subsidy of any kind.

If you ask for the proof that house-building by private enterprise led our recovery, I must reply that this necessarily involves a complicated analysis outside the limits of such a paper as this. The evidence is, however, unimpeachable; when our general economic structure was, shall I say, convalescent, private enterprise in house-building leapt a stage ahead with redoubled vigor and gradually diffused its strength far and wide. The element of leadership is unmistakable; and certainly the industry is such that it radiates its stimulus in an exceptional degree. If you ask the equally important question, "What was the basis of the boom?" I am bound to say that here, too, the circumstances were somewhat complex. For probably no boom, and few economic events of any kind, derive their impulse from a single, exclusive source, uncomplicated by contributory factors. Bearing this qualification in mind, however, I should postulate as the basic prerequisite the general revival of confidence. The contributory factors, which were more or less simultaneously operative, might be summarized as: a rise in real income for large numbers as a result of substantially maintained wages, etc., combined with a marked decline in the cost of living; falling general interest rates (an outcome of Government policy); a decline in housing costs; the migration of industrial population; an almost revolutionary change in the public conception of acceptable standards of housing, the emphasis being placed on quality rather than quantity; and last, but by no means

least, a building society mortgage service (functionally comparable to that supplied by your own building and loan movement) which at once provided adequate resources on reasonable terms and adapted its technique, through due liberalization, within prudent limits, to meet changed conditions. For the boom has been essentially a boom in houses, mainly of moderate size, for sale with building society assistance; and of the purchasers who made the boom possible, I should judge that they were more or less equally divided between black-coated workers and wage-earners. Can one give these facts and factors more concrete expression? It is difficult, but perhaps this goes some way towards doing so: between 1932 and 1936 the average pre-arranged monthly repayments (covering capital and interest) of all new borrowers in a large London Society fell from $24.37 to $18.50.

I referred to the importance of the building society movement in the housing boom and indeed the boom is inconceivable without it. The growth of building societies is one of the heroic episodes of post-war Britain. In 1913 the movement had resources of no more than $325,000,000; today the comparable figure is $3,500,000,000. The movement has spread its net far and wide. It embodies some 2,800,000 investors, whose accession is largely bound up with the financial history of the period, such as the emergence of a large body of small capitalists, inactive spells in the new capital issue market, and so forth. On the other side, the societies embrace 1,300,000 borrowers, representing a striking increase in the number of owner-occupiers among the nation's householders in a short space of time; it was largely the buying of these individually which, as I have explained, gave the housing boom reality. Of the 3,500,000 million houses built in England and Wales since the war, some 2,000,000 have been financed through the building societies, while they have also made advances on other than new property. This, then, has been the medium through which the nation's capital assets have been materially increased in really worth while directions and through which private enterprise has justified the appellation "enterprise" in circumstances indicating that the system under which we live and work is not wholly without the qualities attributed to it in the textbooks—perhaps I should say the orthodox textbooks.

Again, the achievement is equally flattering to yet another institution not without its present-day detractors—I mean democracy; for in as much as our movement largely appeals to the capitalist of modest purse, he has heeded Sir Josiah Stamp's warning when he said that "a democracy that will not let its wealthy save and will not save for itself must slowly sink in the scale of civilization." Of the mechanics of our movement I can say little; broadly speaking, however, it operates in much the same way as large numbers of your building and loan associations, though the differences may be more or less significant according to one's point of view. If I had to describe the differences in a sentence, I might say that we have devised a technique for making the borrower's burden as bearable as possible, which is in turn rendered practicable by the high average standard of the borrower's integrity and a relatively stable level of property values.

Thus the British building society is a type of specialized institution, its field of specialization being the finance of house-purchase. In this it follows the prevailing tradition of British financial institutions, the keynote of which is

specialization. This is necessarily a generalization, and I do not overlook exceptions. For instance, in the housing field funds are available from sources other than building societies and include local authorities, insurance companies, and the private mortgage market. On the other hand, the societies are undoubtedly the most significant single factor in this sphere of activity. A stable, efficient and adaptable financial system is indispensable to a modern economically civilized country. At the head of our financial system stands the Bank of England, not unknown to the world at large and which performs all the functions of a modern central bank and also —for such is the English abhorrence of ultra-neat logical systems—engages in sidelines which would be regarded with dismay in some other countries; I mean, for instance, its participation in rationalization, in the provision of instalment credit for industry and so forth—activities which, I should add, are widely approved in England having regard to the particular circumstances. The immediate satellites of this lone and resplendent planet are our joint stock commercial, or cheque-paying, banks.

The leading features of this system are a commonplace of your elementary treatises. Amalgamation having reached a high pitch, the business is chiefly concentrated in the hands of less than a dozen large institutions—I believe we can still boast the world's largest bank—with a vast network of branches. What we have lost by the passing of the personal touch we have more than gained in the proverbial stability which now characterizes the system; and the amalgamation movement was in any case an inevitable corollary of large-scale enterprise generally. The banks specialize in the provision of medium-term credit to a host of borrowers, the average advance being callable at intervals of, say, six months. It should be appreciated, however, that a banking system is more than a matter of structure and controls. A distinguished French student of our banking system, with little regard for our blushes, has gone so far as to say that "All banking problems have a moral and a social side—a human aspect. Who knows if the superiority of English bankers may not turn out to be partly due to the extent to which they have recognized this truth?"

A highly organized money market provides a supply of short-term credit with maximum efficiency and at minimum cost, while in and around it are a number of distinguished merchant-banking and discount houses which, largely on the basis of this supply, specialize in the finance of overseas trade —and not our own alone—and which in happier days gave the bill on London its international pre-eminence; and the market is also an indispensable medium for financing cheaply a large part of the Government's floating debt. A foreign exchange market which is chiefly a post-war creation serves an obvious purpose. A group of issuing houses specialize in the provision of permanent finance to trade and industry through sponsoring issues in the new capital market. Nor must one overlook the Stock Exchange which, when not pre-occupied in exchanging Rabelaisian stories and the distractions of "jitters," specializes in affording securities the negotiability which is one of the bases of modern finance. The financial firmament is luminous with other constellations—a vast insurance industry, an investment trust organization of considerable magnitude, and latterly a unit-trust movement the stem of which we transplanted from your shores—to name only a few which immediately catch the eye. One could draw

a score of conclusions and as many morals from such a survey. No one, except occasional visiting foreigners in opening a desperate case for funds, claims that the system is perfect, but in a world where perfection is a matter of relativity, we are perhaps entitled to say that, judged by contemporary standards, it serves us well and not least because of its ingrained sense of "touch," its capacity to learn by experience and restraints which can restrain selectively.

Such, then, is the institutional organization of the British financial system; with its assistance (and especially with that of the building societies), combined with such background factors as confidence in the political situation, cheap and plentiful money and a protected home market, Britain last year attained the outstanding peak in her annals of prosperity. In 1937 there were record numbers in employment and we earned a record national income; our index of industrial production (1929 = 100) climbed to 124, which for comparative purposes may be set against your own figure of 92.2 with the index on the same basis. Today British economic activity, reproducing a world trend, is in course of transition, though in our case there are local complications. The housing position in particular is a changing factor in a changing background. The boom element in the program of private enterprise is subsiding and output is in course of adjustment to a more normal level. On the other hand, the local authorities, stimulated by the Government, are committed to substantial rehousing schemes whereby it is hoped to terminate the worst evils of slums and overcrowding throughout the country in a few years. Thus Disraeli's "policy of Sewage," derided in some quarters in the nineteenth century, is now an accepted obligation, on a scale which would have astonished even his imperial imagination, of a progressive community. Moreover, the demands of rearmament on the building industry are not likely to be inconsiderable.

As for the wider range of economic effort, it was latterly much more broadly based than in the earlier phase of revival. By the accepted standards of the normal trade cycle, however, our active trade has been prolonged beyond the usual span and consequently it is all the more susceptible to world tendencies. We are one of the few countries in which fairly complete unemployment statistics are available, but perhaps they are not always presented as they should be. It may give a sense of perspective if I remind you that it has been authoritatively estimated that over the period of the next complete trade cycle the percentage of our insured working population unemployed is likely to be about 16½%; in other words, it will sometimes be less and sometimes more. Last year our percentage unemployed amounted to 10.8%, the latest figure being 12.8%. It is a well-established fact that in the modern industrial community there is always a residual of unemployed. In our case, one may put this quantitatively by saying that there are always about 1,000,000 unemployed, representing short-period unemployment caused by friction in the labor market and seasonal fluctuations; and in addition there are another, say, 500,000 subject to long-period unemployment as a result of structural changes in industry, personal infirmities, and the like. Over and above this there is such cyclical unemployment as may result from depression.

The present cycle has clearly turned into the downward slope, even if belatedly. On the most superficial view, however, it is obvious that we cannot

estimate our prospects in terms of the ordinary trade cycle, for there is the substantial complication of our vast rearmament program. In an effort which is necessarily elastic, the task of prophecy is doubly difficult, but it is well known that we contemplate spending much more than $7,500,000,000 in five years. In terms of industrial production, however, it is doubtful whether in any one year it will absorb much more than the equivalent of 10% of our 1935 production; our index of industrial production (1929=100) was then 105.8 and rose to 124 in 1937. This suggests not an easy, but also not an impossible, task. Moreover, in so far as the program may be regarded as a gigantic form of public works, it will supply a corrective to the downward phase of the trade cycle, unless (which is doubtful) the dislocating effects should neutralize this, and the program is in no immediate danger of being caught up in a spiral of inflation as it might have been in the spring of 1937. In any case, the resources of a flexible monetary policy are available to temper the wind of adverse circumstances and hence the expectation of a gently rising but strictly controlled price level. On the whole, the majority of observers look for a moderate, rather than a severe, recession and certainly do not anticipate a setback of the 1931–2 dimensions. Yet there can be no doubt that the most electrifying tonic which world trade could receive would be an assurance of a world dedicated not to the means of self-destruction but to the pursuits of peace; for the victory of peace is economic progress.

Today Britain, in common with many other countries, confronts an economic world in which the checks and controls would have astounded our grandfathers. Yet our characteristic reaction has perhaps shown little change. Mr. G. K. Chesterton once generalized to the effect that "All good Americans wish to *fight* the representatives they have chosen. All good Englishmen wish to *forget* the representatives they have chosen." You will be the best judge of what you wish to do with your own representatives, but he was not, I think, very wide of the mark so far as Englishmen are concerned in this connection. Perhaps the peculiar genius of the English, as I have hinted, is that they can impose a restraint which restrains within the chosen limits but not elsewhere. And this must, I feel, be partly attributed to the methods of control we have selected. Remembering that we long ago abandoned uncontrolled capitalism, the degree of discipline varies widely from field to field, but in general we seek to keep the degree at the minimum which the circumstances allow and we are even stronger in our partiality for a system which is divorced from the rancour of politics. In fact, the more I think about it the more I am convinced that what we have is not so much systems as individuals; men who through their inherent qualities seem predestined for a particular task and who require a minimum of legislative framework. The capital market provides an excellent instance of this. Here there is a very considerable range of controls, yet there is not a solitary word in regard to most of them on the statute book. They are purely informal, depending upon an understanding here and an undertaking there; a word from the Governor of the Bank of England will adjust this and a representation from the Chairman of the Stock Exchange Committee will redress that. It is of course an arbitrary system (if it is a system at all) and one does not overlook the possibility of abuse. Moreover, there is a considerable left-wing political party which urges a much more

stringent measure of regimentation. Our present philosophy in this matter, however, has stood us in good stead and many would regret a radical divergence from it. Moreover, business and Government can often, if not invariably, establish a satisfactory partnership, even when their political faiths are as the poles asunder. Two examples come to my mind. The late Mr. Philip Snowden (as he then was) as Chancellor of the Exchequer formed a remarkable admiration for and collaborated successfully with the Governor of the Bank of England and this was between two very strong personalities, one of whom had political predilections which were no doubt anathema to the other. Mr. Lloyd George, at the height of his pre-war social-reform campaign, bitterly crossed swords with the head of the London Rothschild's, yet when war came they cooperated most amicably and Mr. Lloyd George actually attended Lord Rothschild's funeral. When all is said and done, the virtue in government is in governing and not in a particular technique as such; in short, government should be through means to ends and not vice versa, even though, as Thoreau despairingly admitted, "the people must have some complicated machinery or other, and hear its din, to satisfy that idea of government which they have."

Railroad Pick-up and Delivery

By EDWARD S. LYNCH*

WITH its inauguration on November 1, 1936 by the railroads in Official Classification Territory, free railroad collection and delivery service was universalized throughout the country. After several years of experimentation with the service on a limited scale, lines in southern and western territories had established it, without restrictions as to distance carried, on January 20 of the same year[1] at practically all their stations.

Rail pick-up and delivery—designated also as collection and delivery, storedoor pick-up and delivery, completed transport and, somewhat less precisely, store-door delivery, direct delivery, and coordinated transportation—involves assumption by the railroad of responsibility for transportation of freight from the shipper's door to the freight platform of the receiver. Such service on L.C.L. freight differs from that for which the railroads are legally responsible and to which they have hitherto largely confined themselves—namely, transportation from the terminal on its line nearest the consignor to the station closest to the consignee of the freight, so-called station-to-station transportation.

History of the Service

The Period to 1914. Completed transportation is not new. In fact, it is far older than the railroad. Shipments from consignors to consignees must be hauled from the former to the latter. Nor is completed transportation under railroad auspices a new development. In England horse drawn teams owned by or under contract with the railroads have been carrying freight from the door of the shipper to the railroad station and from the terminal of the rail line to the consignee for more than 100 years. In fact, the practice was commenced shortly after the opening of the first railroad there.

In this country too, the railroads, almost since their origin, have assumed responsibility for complete transportation of freight in *carload* lots. Freight cars carrying 88% of all carload tonnage handled by Class I railroads of the United States were loaded on the sidings of consignors and hauled therefrom by the roads in 1932. Delivery to such sidings was accorded approximately 77% of the carload freight tonnage.[2] In a very much smaller degree, L.C.L. freight has also been switched to and from the private tracks of manufacturers, wholesalers, jobbers, and retailers, in so-called trap-car or ferry-car service. Approximately 12½% of all L.C.L. tonnage was given collection or delivery, or both collection and delivery, service by trap-car in 1932.[3]

Evidence of the early use by railroads in the United States of other media of transportation to effect complete carriage of freight from the door or platform of the shipper to that of the consignee is rather fragmentary. The writer has found sufficient evidence, however, to convince him that such

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[1] The Pocahontas roads in southern territory did not publish tariffs providing for universal free pick-up and delivery of L.C.L. freight until February 20, 1936.

[2] Cf., Federal Coordinator of Transportation, "Freight Traffic Report," Vol. 1, p. 25 and Appendix 1, Exhibit No. 107.

[3] Cf., Federal Coordinator of Transportation, "Merchandise Traffic Report," Exhibit No. 225-1. Delivery service was rendered on only about 5% of such tonnage according to the Coordinator's "Freight Traffic Report," Appendix 1, Exhibit No. 107.

coordination existed at a very early date on some, at least, of the lines in this country. In 1859, for example, Michigan enacted a law stating:

"Every railway company in this State is authorized to make personal delivery of every parcel, package or quantity of goods or property, if the consignee of such property shall reside within two miles of the terminus or railway station or other terminus of the carriage of such property by the main line of such carrier, and they are hereby authorized to employ or own all means necessary to perform such a duty .... Such delivery shall be at the house, shop, office, or other place of business of the consignee, according to the nature of such property, and where the owner or consignee desires to have the same."[4]

In another Michigan law passed eight years later, the following appears:

"Nothing in this Act shall be so construed as to interfere in any way with the right of railroad companies to *collect* or deliver freights from and to any of their depots and elsewhere .... Provided, that no additional charge shall be made therefor."[5] (Italics supplied.)

It would seem that store-door collection and delivery of freight had been carried on *ultra vires* by the railroads in Michigan. The purpose of these laws, apparently, was to extend the charter rights of railroads incorporated in that State to cover the service.

Peculiar terminal conditions at Baltimore, Md., impelled the Philadelphia, Baltimore & Washington Railroad to institute a store-door delivery service there in 1867.[6] Of 463 railway companies responding to a questionnaire submitted by the Interstate Commerce Commission, June 17, 1889, 65 declared that they were affording free cartage delivery[7] of freight, or in lieu thereof equalizing cartage allowances by rebates from the public station-to-station rates.[8] In the following year the Commission found that the Detroit, Grand Haven & Milwaukee Railroad had rendered free collection and delivery service at Grand Rapids, Michigan "for twenty-five years and upwards"[9] and that similar service had been rendered at widely separated points by other roads over an extended period of time.

In no case were the pick-up and delivery operations of this early period universal. Drayage was rendered at only a few cities—"at exceptional stations," as counsel for the Detroit, Grand Haven & Milwaukee expressed it.[10] Large cities, where the freight tonnage was of sufficient magnitude to warrant the service and where competition among several rail lines was very keen, were those primarily favored. In the words of the Commission, "the service was ... regarded by the railroads as an anomaly which originated in certain local conditions."[11]

A series of unfavorable decisions[12] by

[4] Laws 1859, No. 96, §3. It will be noted that this applies to store-door delivery only—not to the pick-up or collection phase of the completed service.

The act contained the following proviso: "That in all cases where the consignor or consignee shall desire to have such property taken at the depot, station or terminus of the carriage of the same, he shall be at liberty to do so ... "; indicating that even at this early date the service was optional with the shippers and receivers of freight.

[5] Laws 1867, No. 124.

[6] Authorities generally accept this as the first such service in this country. The writer believes that he has adduced sufficient evidence to warrant the conclusion that such coordination or authority therefor antedated this operation by several years.

[7] Apparently some roads were also offering free pick-up service. Cf. *Stone and Carten v. Detroit, G. H. & M. R.R. Co.*, 3 I.C.C. 628 (1890).

[8] I.C.C., 3rd *Annual Report*, p. 18.

[9] 3 I.C.C. 615 (1890).

[10] Cf. brief presented to the United States Circuit Court for the Western District of Michigan, October 13, 1892.

[11] *Pick-up and Delivery in Official Territory*, 218 I.C.C. 443 (1936).

[12] *Stone and Carten v. Detroit, G. H. & M. R.R. Co.*, 3 I.C.C. 613 (1890). The Supreme Court of the United

(*Footnote 12 continued on page 122*)

the Interstate Commerce Commission, extending over almost a quarter century, brought to an end the first era in the history of pick-up and delivery in the United States. With the discontinuance of the service at Washington and Baltimore in 1913[13] and on the Grand Trunk in 1914,[14] the railroads of the United States ceased using other media of land transport to effectuate completed carriage.

The Period 1914 to 1930. The years between 1914 and 1930 were replete with abortive plans for pick-up or delivery service or both. These plans were designed to be operative in certain localities only. In a few rather isolated cases the service, in one form or another, was actually instituted.[15] In one terminal region (St. Louis) direct delivery service, a modified form of collection and delivery, known also as constructive station operation, has had an uninterrupted history since 1870, when it was inaugurated by the Louisville & Nashville.[16]

Store-door delivery at New York City for both carload and L.C.L. freight was on the verge of inauguration on several occasions in the years after 1917. Had the war continued a few months longer, it would undoubtedly have come. The Director-General of Railroads, Mr. McAdoo, had given orders to that effect in July, 1918. The service was to commence August 15, but establishment was postponed twice thereafter in order that difficulties of a minor nature might be ironed out.[17] The conclusion of hostilities abroad caused abandonment of the proposed plan. Agitation by various shippers' organizations in New York City for some form of completed service continued, however. In response to their demands, the so-called constructive station device was adopted by the Erie in 1921 and by all other roads serving New York[18] during the succeeding five years. In the years after withdrawal of the service in 1929,[19] plan after plan was proposed by New York shippers and transportation experts, adopted by the railroads, but not put into effect.[20]

With the onslaught of the depression and growing motor competition, the railroads commenced again to think of completed transportation as a means of increasing traffic and revenues. The years 1929, 1930, and 1931 brought sporadic experiments in this field and in

(*Footnote 12 continued from page 121*)
States later overruled the Commission in *I.C.C. v. Detroit, G. H. & M. R.R. Co.*, 167 U.S. 633 (1897); *Hezel Milling Co. v. St. L., A. & T. H. R.R. Co., et al*, 5 I.C.C. 57 (1891); *Canassa v. Pennsylvania R.R. Co.*, 24 I.C.C. 629 (1912); *Anacostia Citizens Assn. v. B. & O. R.R. Co.*, 25 I.C.C. 411 (1912); *Washington, D.C., Store-Door Delivery*, 27 I.C.C. 347 (1913).

[13] *Chamber of Commerce of Washington, D.C. et al v. Baltimore & Ohio R.R. Co. et al*, 30 I.C.C. 446 (1914); *Merchants and Manufacturers Assn. v. Baltimore & Ohio R.R. Co. et al*, 30 I.C.C. 388 (1914).

[14] The Grand Trunk discontinued the service when the shippers at points on its line not so favored threatened to bring complaint before the I.C.C.

[15] The electric railways look upon themselves as pioneers in this field. The Cincinnati and Georgetown R.R. Co. began to hire truckers to collect and deliver freight hauled over its lines in 1918. ("Merchandise Traffic Report," *op. cit.*, Exhibit 225–2, p. 325.)

[16] For a history and description of this service at St. Louis, see *Transfer of Freight within St. Louis and East St. Louis*, 155 I.C.C. 129 at 151 et seq. (1929).

[17] The proposed operations did not really constitute *railroad* pick-up and delivery; nor was the service to be rendered free. The responsibility of the railroad for the freight carried was to end at its pier terminals. The truckers, however, were to be organized and supervised by a drayage director, appointed by Mr. McAdoo. He was to fix the drayage charges to be paid by the shipper. The latter was *not* to have the option of performing his own drayage.

[18] Although the New York Central never adopted the constructive station device, its so-called constructive lighterage plan and its results were very similar.

[19] The service was discontinued following the decision of the I.C.C. in *Constructive and Off-track Railroad Freight Stations on Manhattan Island, N.Y.*, 156 I.C.C. 205 (1929).

Leave to withdraw the service had been requested by all railroads involved, except the New Haven.

[20] Store-door delivery service was commenced by the Baltimore & Ohio, July 1930, but abandoned after only 10 days' operation at the instance of other lines serving the City.

widely separated regions.[21] In practically every instance, these experiments were made through subsidiary trucking companies in what came to be known as express freight service.[22] As a result of the experience thereby gained, about 100 lines in the Southwest began, November 16, 1931, to offer pick-up and delivery[23] at practically all stations on their lines. Station-to-station rates only were charged for rail hauls, line and interline, up to 300 miles; for greater distances, arbitraries in addition to these rates were levied.[24] In the following years the service was instituted on other lines in all sections of the country, the free limits were extended, and many other changes took place.

The Present Situation

In the meantime the results of this innovation were undergoing very rigorous scrutiny by railroad executives. Conferences were held in various parts of the country to determine whether the operations should be maintained, extended, or discontinued. At its annual meeting in November, 1935 the Association of American Railroads adopted a resolution recommending to constituent roads the installation of pick-up and delivery as soon as possible and practicable.

As a result of a decision of the Commission on January 17, 1936 not to suspend their tariffs, practically all railroads in the South, West, and Southwest established on January 20, 1936 a universal, optional collection and delivery service, free of charge, with allowances to shippers and consignees not choosing to seek the service. The Pocahontas roads afforded similar privileges one month later. After lengthy hearings on the subject, the Commission on November 16, 1936 permitted[25] the remaining lines to establish it.

The service as now rendered by practically all roads in the country is confined to L.C.L. freight. It is offered at no additional charge above the rail station-to-station rates—hence free.[26] It is universal in that it is offered without restrictions as to distance hauled[27] over the railroad line and as to the origin and destination of the traffic.[28] It is optional in that the shipper and receiver may haul their freight to and from the station if they so desire. If such a choice be made, they are entitled to an allowance —really, a rebate from the line-haul rate—of five cents per hundredweight at each terminal.[29]

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[21] By the New Haven in 1929, certain roads serving Texas in 1929 and 1930, and lines in the Northwest in the latter year.

[22] This was not true railroad pick-up and delivery. The trucking subsidiary, in fact, really acted as a quasi-forwarding enterprise. It, not the railroad, assumed responsibility for collection of freight at the door of the shipper. It, not the railroad, contracted with truckmen to deliver freight from the railhead to the door of the consignee. The purpose of this arrangement was to avoid possible charges of discrimination under the Interstate Commerce Act.

[23] Agent J. E. Johanson's Tariff, I.C.C. 2318. In this case the railroads assumed full responsibility for completed transportation.

[24] Provision was also made for allowances to shippers doing their own cartage to the rail terminal; but no such rebate was given to receivers hauling from the rail station.

[25] *Pick-up and Delivery in Official Territory*, 218 I.C.C. 441 (1936).

[26] Actually, the service is not free. As pointed out below, the shipper and receiver are entitled to receive an allowance of 5 cents at both ends in lieu of it. In effect, station-to-station rates are reduced by 10 cents per hundredweight.

[27] In the early experiments, plus-charges were added to the rail rates on freight receiving a rail haul of more than a designated number of miles, the distance being that generally regarded as marking the outside limit of truck transportation. Gradually, however, this distance was increased as the sphere of truck competition widened and with expansion of forwarding and carloading companies. Another factor influencing this change was the feeling that the plus-charges on long distance traffic were causing a diversion of even short-haul traffic to the truck.

[28] Originally, plus-charges were added to the rail rates on interline traffic—traffic not local to the line affording the service.

[29] Although the service is optional on the New Eng-

(*Footnote 29 continued on page 124*)

Completed transportation is not, as a rule, afforded at all railroad stations, but only at those where L.C.L. freight tonnage is adjudged sufficient to warrant it.[30] Nor is it granted in all cases even at those stations where the service is available. In Official Classification Territory only shipments the rail charge on which is at least 45¢[31] per hundredweight are collected and delivered by the railroad without additional charge.[32] Then, too, commodities such as explosives, exhibits, hides and skins, and plate glass are excepted from the service because of peculiar liability to damage or decay, because of bulkiness, or because their transportation is especially hazardous. Finally, the service is not accorded to imports and exports at ports.

Under the terms of the tariffs filed, the railroad's responsibility for transportation originates at the store door, freight platform, or other accessible loading place of the shipper and ends at a similar property of the receiver, in all cases where the parties at both ends elect to use the railroad's carting services.[33] The actual trucking is performed only rarely by the railroad itself. In some instances, its own subsidiary directly, or indirectly through contracts with individual truckers, performs the service; in others, local truckmen under contract with it act as its agents; in still others, large over-the-road trucking concerns, its direct competitors, are hired by it to carry the freight to and from its clients' doors; and finally, the railroad-owned Railway Express Agency performs the service for certain lines.

Reasons for Development of the Service

The reasons impelling railroad executives to extend their transportation sphere beyond rail terminals at both ends, to consignors and consignees, were many and diverse: the desire to effect operating and overhead economies both in line haul and in terminal operations, to increase profits by attracting a larger demand for railroad transportation, to satisfy the demands of shippers for extension of railroad operations to their freight platforms, and the even more insistent and protracted agitation of consignees for railroad store-door delivery, and finally to meet competition—"and the greatest of these was" *competition.*

Railroad spokesmen maintained that inauguration of completed transportation[34] would make possible the concen-

(*Footnote 29 continued from page 123*)
land lines, they grant allowances to shippers and receivers doing their own carting only at points served also by roads granting such allowances.

[30] The practice in this regard varies widely. For example, of 509 stations on the Boston & Maine at which L.C.L. freight is handled, collection and delivery is given at only 103; the Erie affords it at 233 of its 497 L.C.L. stations; the Missouri Pacific at all but 25 of its 750 stations. Where the service is not offered, allowances are nevertheless given in most instances. And, as pointed out later, if shippers at such points can prove that they are thus discriminated against, the Commission will force the roads either to accord the service also to them or to discontinue it at the other points.

[31] The roads desired to establish a 30¢ per cwt. minimum, but the Commission ruled that the 45¢ rate must be fixed on the ground that a lesser rate would be non-compensatory for both rail and collection and delivery services (218 I.C.C. 480).

[32] On shipments carrying lesser charges, shippers and receivers may, as a rule, receive the service if they pay the difference between the actual charge and 45¢.

The 45¢ minimum is a significant restriction. In eastern territory, 45¢ will carry L.C.L. freight, rated first class, 83 miles; second class, 94 miles; third class, 115 miles; and fourth class, 167 miles.

[33] Where shipper and consignee elect to do their own trucking or to have it done for them by agents other than the railroad, the latter's responsibility begins and ends at its receiving and delivering stations.

[34] Had the railroad era been delayed until the twentieth century, it is quite probable that complete service from consignor to consignee would have been instituted immediately and that rail terminal areas and facilities would have been much less extensive. Low land values in this country in the middle of the nineteenth century were favorable to the station-to-

(*Footnote 34 continued on page 125*)

tration of freight at main stations and the reduction of storage space at even these. Through elimination[35] of all except main stations in the larger communities, of way stations, and through a reduction in the capacity of those not abandoned outright, it was expected that the roads would avoid large rentals where the property was operated under lease. In those cases where the property was railroad-owned, it was to be sold; and very advantageous locations gave rise to the hope for substantial sale prices. Station elimination would also enable reduction in switching, handling, floating, and intraterminal trucking, and the expenses connected therewith.

The capital investment in freight cars and the expense of maintaining them would be greatly diminished as a result of the heavier loading of L.C.L. freight.[36] Speedier movement through terminals would reduce overtime expense. The clerical expense connected with sending out arrival notices would be eliminated. Finally, the chances of loss of and damage to freight[37] would be greatly diminished.

No railroad executive or transportation authority has contended that the savings thus effected would be sufficient to offset the additional expense involved in delivering freight to and from stations from and to the places of business of shippers and receivers.[38] Enhanced profits as a result of these operations, assuming, of course, that no additional charge over and above the station-to-station rates was to be made, were therefore contingent upon increased traffic. Traffic officials felt themselves amply justified in anticipating such a result.

Store-door delivery, and to somewhat less extent, collection of freight had been demanded by shippers for years. The answers of more than 35,000 shippers to one of the multifarious questionnaires of the Federal Coordinator had indicated an almost overwhelming demand for the service. Sixty-five per cent of them, responsible for 67% of the tonnage reported by all responding shippers, stated that they were using truck transportation in part because of store-door delivery.[39] Practically every shipper's organization in the country had taken a very positive stand on the matter.

(*Footnote 34 continued from page 124*)

station transportation typical here. Contrary conditions in England were largely responsible, in the writer's opinion, for early installation of consignor-to-consignee carriage. Lack of adequate terminal facilities was largely responsible for inauguration of pick-up and delivery service in cities like Washington, Baltimore, Toledo, Detroit, and Philadelphia in the nineteenth century.

[35] "British carriers estimate that without collection and delivery service 50% additional station capacity would be required." ("Merchandise Traffic Report," *op. cit.*, p. 9).

[36] "It has been the practice for each station . . . to forward and receive traffic in cars to and from a number of destinations and points of origin. . . . This plan resulted in a great number of duplications of loading arrangements and the utilization of an excessive number of cars loaded far below the cubical capacity." (I.C.C., I. and S. Dockett No. 4191, Vol. 4, p. 797, testimony of J. L. Webb.) The same gentleman alleged that, as a result of the service, L.C.L. freight car loadings on the Pennsylvania had increased from an average of 3.5 to more than 6 tons per car between 1933 and 1936.

[37] On the Pennsylvania, a reduction of $185,840 in claims for loss of and damage to L.C.L. freight was effected in the years 1934 and 1935 as compared with 1933, a reduction that Mr. Webb, above cited, attributed to establishment of pick-up and delivery, pointing out that claim payments amounted to 1.75% of the revenue received from freight accorded the service, while the corresponding figure for all other freight was 3.09%.

Mr. T. J. Gallagher, Manager of Station Service, Erie Railroad, reported: "We have had a very abrupt decrease in our concealed damages." (I.C.C., I. and S. Docket No. 4191, Vol. 4, p. 1077.)

[38] Mr. Webb's estimates of terminal economies that the Pennsylvania would effect approximately offset the trucking charges that would be incurred. It should be noted, however, that his estimates were based on the assumption that no shipper would exercise his option of performing his own drayage, an assumption absolutely without warrant as will be shown later.

[39] "Merchandise Traffic Report," *op. cit.*, Exhibit III.

The pick-up service was mentioned by 51% of their number, responsible for 54% of the tonnage involved.

In the writer's opinion, however, the most important single reason for nationwide adoption of the service by the railroads was competition—with the motor truck, with freight forwarders, with water carriers, and especially among themselves.

Establishment of store-door delivery at Baltimore by the Philadelphia, Baltimore & Washington in 1867 and by the Baltimore & Ohio in 1883 was in large measure occasioned by the fact that water carriers operating to that port from Philadelphia, New York and New England points were draying freight to the consignee's door.[40]

In 1889 the Michigan Central and the Grand Rapids, Lansing & Detroit established free drayage at Grand Rapids, Michigan. The immediate occasion for that innovation was the growing encroachments on their traffic by the Detroit, Grand Haven & Milwaukee which had performed free hauling at that City for a number of years.[41]

The modified form of pick-up and delivery in New York City in the '20s was established by most roads there solely for competitive reasons.[42] The conclusion is almost inevitable that the controlling reason for the recent institution of free hauling, by the majority of the roads at least, was the fear of losing traffic to competing agencies which haul from store-door to store-door.

With exceptions, becoming more and more numerous, trucking concerns have transported directly from consignor to consignee. Most freight forwarders also assume responsibility for complete shipper-to-consignee transportation. Water carriers to a large and growing extent likewise utilize trucking concerns to originate and terminate tonnage.

The early "express freight" experiments by railroads in the Southwest and Northwest were designed primarily to regain traffic that had been attracted to the truck. With establishment by certain roads of so-called "all-commodity rates" in 1932, the incursions of the freight forwarder into rail L.C.L. traffic attained alarming proportions. It was hoped that inauguration of collection and delivery service with no additional charges would offset the attractiveness to the shipper of the forwarder's operations.[43]

Economics of the Service

Railway executives are not now nor have they ever been unanimous as to the economic advisability of completed transportation. The first case on the subject to be brought before the Commission was railway-fostered.[44] With the exception of the New Haven, all roads

[40] It is significant that freight hauled by the same roads from *interior* points to Baltimore and Washington was not accorded cartage service.

[41] 3 I.C.C. 624 (1890).

[42] "A witness for the Lehigh Valley testified that competition was the sole reason for the establishment of those services and that the step was taken only when it found it was losing traffic to the Erie. . . .

"The Delaware, Lackawanna and Western established its constructive stations on April 1, 1925, to meet the competition of the Lehigh Valley and the Erie." (*Constructive and Off-track Railroad Freight Stations on Manhattan Island, N.Y.*, 156 I.C.C. 205(1929).)

The same report cited the Central of New Jersey as having adopted the service "solely as a competitive measure" and the Baltimore & Ohio, "partly because of the competition of other lines and partly because of the desire to experiment with it."

[43] At the hearings before the Commission in I. and S. No. 4191, it was rather widely bruited that the Pennsylvania had inaugurated the service to counteract advantages accruing to the New York Central because of its control of Universal Carloading and Distributing Company and to the Van Sweringen Lines through their ownership of National Carloading Corportation.

[44] " . . . Some further facts were developed not in the agreed statement of facts, and about which there was no dispute . . . the Michigan Central . . . procured the complaint in this proceeding . . . and . . . the petitioners were merely nominal parties . . . it is in reality the complaint of the Michigan Central Railroad." (*Stone and Carten v. Detroit, G. H. & M. R.R. Co.*, 3 I.C.C. 624, dissenting opinion of Commissioner Bragg.)

offering modified pick-up and delivery services at New York City petitioned the Commission for leave to withdraw it.[45] A store-door delivery service established by the Baltimore & Ohio on July 30, 1930 was suspended after only 10 days' operation. Competing carriers had "objected vigorously." President F. E. Williamson of the New York Central in a letter to the Federal Coordinator of Transportation, September 20, 1933, wrote:

"During the past few months the President's Traffic Conference, Eastern Territory, has had under consideration a suggestion that store-door pick-up and delivery service be inaugurated throughout Official Classification Territory. . . . Many of the . . . principal carriers in the territory have not been in favor of it."[46]

As late as March 20, 1936 a New Haven official spoke of the "considerable difference of opinion, not only among railroad men but among shippers, as to the advisability or necessity of embarking upon pick-up and delivery."

That competition from motor carriers and freight forwarders alone would have impelled inauguration of a nation-wide system of pick-up and delivery is extremely dubious. Were it not that the nation's railroad market is of the chain-competitive type, there is little likelihood that many systems would have extended their hauling beyond their railheads.

Six years elapsed between installation of completed transportation by certain roads in the Southwest and universalization of the service throughout the country. The movement in the East had its origins in the somewhat hesitant steps taken by the Pennsylvania, the Reading, and certain New England lines in 1932. Roads competing at border points with these systems at either end of the country found themselves losing traffic and, in self-defense,[47] installed a like service.

The Southwestern carriers were followed by certain roads in the West; they in turn by lines in the South. Within two months of the inauguration of the service by the Boston & Maine, four of the six[48] remaining large roads and practically all the short lines in New England had adopted it. Before the end of 1933 the Pennsylvania found its services duplicated by those of the Lackawanna, the Erie, the Chesapeake & Ohio,[49] and several other carriers.

Another indication of the effects of interrail competition lies in the sequence in which various modifications and elaborations of the service were made. Extension of the rail-haul limits for free pick-up and delivery by one line was speedily followed by others competing with it at certain points. The decision of the western lines, December 13, 1935, to accord the service free of charge without mileage restrictions (the so-called "universal" feature) had a snowball

[45] 156 I.C.C. 205 (1929).

[46] He further stated: "Only the Boston and Maine and Maine Central, who already render such service in some manner, the Grand Trunk who render service of a similar character in Canada, and the Wheeling and Lake Erie, concurred in the proposition of the Pennsylvania Railroad" [to inaugurate the completed service].

[47] In the letter above referred to, Mr. Williamson made the following significant statement: "It is obvious that the proposed action of the Pennsylvania, which reaches nearly every city of consequence in Official Classification Territory, directly affects all other carriers in that territory; and that such action . . . must necessarily force the other carriers to protect themselves."

[48] It is interesting to note that the other two—the New Haven and the Boston & Albany—did not have to meet the competition of the Boston & Maine in this regard. The latter studiously avoided inviting reprisals from either by neglecting to install free haulage at points competitive with them—some of them rather large traffic centers like Worcester, Springfield, Northhampton, Lowell, and Fitchburg, all in Massachusetts. The Central Vermont likewise refrained from according it at New London, Norwich, Willimantic, and Palmer, points served also by either the New Haven or the Albany.

[49] A representative of this line admitted that competition was the sole reason for establishing the service (I.C.C., I. and S. Docket No. 4191, Vol. 4, p. 1067).

effect. The southwestern lines voted to adopt a similar plan to come into effect on the same date (January 20, 1936). Petitions to the Commission by the Louisville & Nashville, Illinois Central, and other southern lines for sixth-section relief[50] ensued shortly thereafter. Lines in Central Freight Association Territory, competing with them at border points, filed similar tariffs and with similar petitions. One day after the Commission refused (January 17, 1936) to suspend the tariffs of the western roads as requested by the American Trucking Association, Inc., the Pennsylvania announced that it would institute a similar service. Six days later (January 24, 1936) the executives of the principal eastern roads met in New York City and voted to inaugurate universal pick-up and delivery on their lines. During the hearings[51] held by the Commission with respect to the proposed tariffs of the latter lines, it was reiterated time and again that an impelling reason for institution of the service was the loss of traffic "at border points such as Washington, St. Louis, Chicago, and Norfolk where the service is now furnished by the southern and Pocahontas roads."[52]

Results of the Service

As in the case of most economic innovations, the success or failure of this form of coordinated transportation is difficult to determine. The writer is strongly tempted to let the following gem from the pen of a southern railway executive suffice as an answer: "The general operation of the pick-up and delivery service attracted more or less carload business than we otherwise would not enjoy."[53]

That rail L. C. L. traffic has increased is beyond question. Inasmuch as the affording of free pick-up and delivery service operates, in most cases,[54] as a constructive decrease in rates, this is not surprising. That rail revenues have increased *as a result of this new development* by a greater amount than the additional costs incurred is questionable.

In the first place, concurrently with their completed transportation experiments, railroads were indulging in other practices designed to attract traffic, such as a speedier transportation, lower L. C. L. freight rates, etc.[55] To what extent tonnage and revenue increases were attributable to one or the other of these policies cannot be determined. Then, too, the improvement in business conditions would have brought about a traffic increase, regardless of any such pick-up and delivery inducement.

How large a percentage of the expansion in L.C.L. tonnage consists of freight that would otherwise move in carload lots is also uncertain. On purely a priori grounds, it would be reasonable to expect some such diversion. The difference between carload and L. C. L. rates on many commodities amounts to only one class. In a few cases, there is no difference.[56] On hauls of 100 miles, the first class rate is only 12 cents higher than the second class rate; the latter exceeds the third class rate by only 9 cents. In addition, as pointed out above, almost ¼ of the carload freight handled by rail-

[50] That is, filing a pick-up and delivery tariff to become effective on shorter than statutory notice.

[51] I. and S. Docket No. 4191.

[52] 218 I.C.C. 449 (1936).

[53] "Merchandise Traffic Report," *op. cit.*, Exhibit 225, Note 7, p. 337.

[54] "In most cases" is inserted advisedly, since many shippers would apparently find the service an absolute diseconomy, as shown later.

[55] For example, when the Reading established the service in 1932, it reduced certain of its L.C.L. rates 33⅓%. Roads in the Northwest adopted practically a new scale of L.C.L. rates when they inaugurated pick-up and delivery in 1931.

[56] As a rule, carload traffic is rated two classes lower than L.C.L. traffic.

roads in the United States is not switched to private tracks, and hence must be trucked by the shipper and receiver or their agents. In the case of some commodities, that percentage is higher. The Federal Coordinator found the average trucking costs of shippers hauling freight to and from railroad freight terminals to be 18 cents per hundredweight.[57] To the extent that such diversion has taken place—and statistical studies not yet ready for publication made by the writer apparently bear out his a priori deductions—the carriers have suffered financial loss. And, it might be added, a social loss has also been incurred, inasmuch as the handling of L. C. L. freight requires utilization of a far greater amount of economic resources than does transportation in carload lots.

As stated previously, one of the principal results anticipated by proponents of collection and delivery was the more economical operation of rail terminal and line-haul facilities. Though some such savings have been made, they have not been as great as expected. The principal cause of this has been the unwillingness of a large percentage of the shippers to use the service. At Chicago, for example, less than 15% of the tonnage *eligible*[58] for the service is accorded pick-up and delivery.[59] The Illinois Central and Missouri Pacific dray only about ½ of the eligible freight. On other roads, the percentage is even less.[60]

Only if they can profit by doing so will shippers and receivers avail themselves of free haulage.[61] This is true also in the case of the services offered by motor trucks.[62] In many cases, they find it less costly to perform their own trucking than to have it done by the line-haul carrier. To many of them, the hours at which railroad trucks collect and deliver are inconvenient and acceptance of the service would involve added labor and platform expense. In cities served by more than one railroad, duplication of trucking facilities by roads would cause platform congestion. For certain commodities, specialized equipment not owned by the railroads is needed, the lack of which would again force shippers and receivers to incur unnecessary expenses. Some consignees value very highly the four-day warehousing privileges given by the lines to L. C. L. freight. Still others never actually receive the freight billed to them; rather their draymen are instructed to truck directly to customers who have purchased it from them. Still other shippers would accept free trucking from the railroad, were it not for the fact that the latter offers an allowance—a rebate—to those performing the service themselves. Shippers located very close to the railroad station and consigning L. C. L. freight in fairly large quantities can oftentimes have the service performed by contract truckmen for less than the allowance received by them. Still other

[57] "Merchandise Traffic Report," *op. cit.*, p. 20, note 91, and Exhibit 330, p. 379.

[58] That is, freight not disqualified because of the nature of the commodity, per-hundredweight freight charge, or station of origin and destination.

[59] *Power Wagon*, August, 1936, p. 44.

[60] The executive of one railroad wrote that about 80% of the pick-up and delivery expense incurred by his line was in the shape of allowance to shippers and receivers. (Cf. "Merchandise Traffic Report," *op. cit.*, Exhibit 225.)

[61] Seven per cent of the shippers responding to a Coordinator questionnaire stated that their failure to use trucks was occasioned by the fact that the latter insisted on picking up and delivering freight from and to their store doors ("Merchandise Traffic Report," *op. cit.*, Exhibit 111).

[62] "In the State of Minnesota . . . the pick-up service is not done by the line-haul truck. . . . In most instances 75%—and I am now speaking from the record before the Minnesota Commission—of the freight is taken to the warehouse by the owner of the freight himself, as he takes it to the railroad station." (A. L. James, "The Importance of the Railway," an address before the Northwest Shippers Advisory Board, Nov. 10, 1931.)

shippers and receivers own trucks which they employ for other purposes and can haul their own freight for little additional cost. In still other instances the failure of shippers to utilize the services of the railroad truckmen is a transitory one. Quasi-rents remain in trucks purchased by them for hauling purposes and, so long as the variable costs incurred in operating them are less than the allowance offered by the rail carriers, they will continue to be used. A similar situation exists with respect to the rates of many local truckmen, whose business is gradually being turned over to the rail's agencies. Such conditions, however, will not continue indefinitely.

Railway executives, while by no means unanimous, feel that the service has been profitable.[63]

Many opponents of the entrance of the railroad into the extra-terminal hauling field have suggested, as an alternative and better means of attaining the desired goal, rate reductions on L. C. L. traffic. Others, while agreeing that completed transportation is desirable, object to the optional feature of the present tariffs. Still others feel that the service should be accorded and the optional feature retained, but that allowances should not be given. Finally, not an inconsiderable number of authorities maintain that L. C. L. traffic is unprofitable and should be abandoned.

From a social point of view, pick-up and delivery service should be rendered by rail carriers only if, and to the extent that, a smaller expenditure of economic resources will be made than would be the case if it were performed by shippers and receivers or their agents;[64] from the railroad's point of view, if, and to the extent that, greater profits will thereby be earned. The difference between the results under the two criteria will depend upon the deviation of the market from perfection. Since, as a matter of practical fact, the latter criterion alone is used, the writer will consider it only, conceding, however, the greater importance of the former.

The demand curves for railroad transportation with and without store-door service will differ. So will the cost curves. Whether the amount taken at a given set of rates when a non-optional collection and delivery service is offered will be greater or less than when the railroad confines itself to station-to-station transportation is uncertain, since some shippers will suffer diseconomies as a result of the former service. The same uncertainty enshrouds the question of cost differentials. Here it is a question of the extent to which terminal and line-haul economies resulting from pick-up and delivery service offset the added cost incurred for hauling. That the demand curve for transportation with optional store-door pick-up and delivery will be further to the right (and hence the amount taken at a given rate greater) than either of the above demand curves is beyond question, since some, probably the majority of shippers would not suffer diseconomies as great as the cartage savings made. The question of relative costs is one yet to be discovered through experimentation. Finally, the demand curve when both the optional and allowance features are

[63] But Mr. MacAnanny, Assistant Traffic Manager of the Boston & Maine, which has been furnishing free collection and delivery since 1932, said: "I do not know yet," in response to a question as to the profitableness of the service (I. and S. Docket No. 4191, Vol. 3, p. 310).

[64] In the last analysis, pick-up and delivery service as now rendered by the railroads is socially advantageous only if the sum of present and discounted future economies to the shippers and the railroads arising therefrom is positive.

A thorough consideration of the subject from the social point of view would necessitate an examination and critical evaluation of the entire railroad—indeed, the entire transportation—rate structure.

present will be to the right of all three of those above.[65] Again the cost situation cannot be determined by purely deductive reasoning.

Ideally, that is, considering the best interests of their stockholders, railroad managements should offer that service, or combination of services, on the various commodities at the set of rates which will maximize the excess of their receipts above their costs. That is, considering the demand and cost situations in the above four cases and their variations,[66] the managements should choose that set of demand and cost curves whose marginal curves enclose the greatest area. Here my problem ends—that of railroad management begins.[67]

Legal Status of the Service

As in practically every phase of railroad operations, a considerable body of law and administrative precedent has been developed with respect to pick-up and delivery service. Many points are yet to be clarified.

It is apparently well[68] established that "no obligation rests upon a railroad either at common law or under the Interstate Commerce Act to effect delivery or receive freight at the shipper's store door."[69] On the other hand, "there is nothing in the Act to prevent the establishment of such service."[70] If, however, a carrier elects voluntarily to render it, the service comes within the purview of the Commission.

If the rendition of the service unduly depletes carrier revenues, the Commission may compel its withdrawal.[71] A long line of decisions by the Commission and by the Supreme Court of the United States has established that, where, pick-up and delivery is available at one point on a carrier's line and withheld at another, the carrier must either withdraw the service rendered or install it at the place from which it has been withheld.[72] Injury to shippers must be shown and complaints made by them.[73] If the discrimination alleged is against shippers at localities not served directly by the road affording the service, but to which such road quotes joint rates, the Commission will not order abandonment of the service.[74] On the other hand, such joint rates must include collection and delivery service if the connecting road so demands.[75] Finally, the service may not operate so as to extend trans-

[65] The difference between this case and that immediately preceding lies in the fact that some portion of the service—that on which the allowance becomes effective—is rendered at a lower rate than in the former situation.

[66] And these variations are myriad—e.g., free pick-up and delivery, at a flat charge different for each locality, at charges varying approximately with costs of performing the service, etc.

[67] As stated above, some authorities maintain that L.C.L. service should be abandoned. They would therefore say that our problems should have begun and ended at an earlier stage—and perhaps they should have. The above discussion begins with the assumption that such L.C.L. service as is offered by the railroads will continue to be offered. With that as his starting point, the writer has attempted to lay the foundation for the answer to the question: What efforts, if any, should be made by the railroad to retain and expand that traffic?

[68] But cf. Mr. Eastman's dissenting opinion in *Scott Bros., Inc., Collection and Delivery*, MC 2744, June 10, 1937, Note 2, Sheet 16.

[69] *Motor Truck Club of Mass. v. B. & M. R.R.*, 206 I.C.C. 22 (1934). Cf. also *Bills of Lading*, 52 I.C.C. 679 (1919); *Constructive and Off-track Railroad Freight Stations on Manhattan Island, N.Y.*, 156 I.C.C. 223 (1929).

[70] *Tariffs Embracing Motor-Truck or Wagon Transfer Service*, 91 I.C.C. 539 (1934).

[71] *Motor Truck Club of Mass., Inc. v. B. & M. R.R.*, 206 I.C.C. 18 (1934).

[72] *Canassa v. Pennsylvania Railroad et al.*, 24 I.C.C. 629 (1912); *Anacostia Citizens Assn. v. B. & O. R.R. Co.*, 25 I.C.C. 411 (1912); *Washington Store-Door Delivery*, 27 I.C.C. 347 (1913); *Wright v. U.S.*, 167 U.S. 512 (1897).

[73] 206 I.C.C. 18.

[74] *Rules Covering Collection and Delivery of L.C.L. Freight at Bennettsville, S.C.*, 157 I.C.C. 277 (1929).

[75] *Terminal Service on Arkansas Valley Inter-urban Railway and Kansas City, Kaw Valley and Western Railroad*, 201 I.C.C. 703 (1934).

portation beyond points included within the terminal limits of a carrier's line.[76]

The allowance feature, although not an essential part of pick-up and delivery service, has also been a subject of litigation. It has been established that "there is no requirement that an allowance be paid to a shipper for performing said service,"[77] and a Federal court has ruled that such allowances do not constitute an unlawful rebate.[78] On February 28, 1938 the Interstate Commerce Commission ruled[79] that motor carriers engaged solely in performing collection and delivery service for railroads are not subject to Part II of the Interstate Commerce Act (the Motor Carrier Act of 1935). Rather, it was held, the service that they perform is an integral part of the common carrier service performed by the railroads and, as such, subject to regulation by the Commission under Part I of the Act. Thus was resolved a question which had resulted in a great number of conflicting decisions.[80]

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[76] *Drayage and Unloading at Jefferson City, Mo.*, 206 I.C.C. 436 (1935).

[77] 206 I.C.C. 22 (1934).

[78] *Amer. Trucking Assns. v. U.S.*, 17 Fed. Supp. 655 (1937).

[79] *Scott Bros., Inc., Contract Carrier Application*, MC 2744 (1938).

[80] Joint boards created under the Act have decided in one case that motor carriers hauling to and from store doors of consignors and consignees are common carriers, and in another that they are contract carriers, subject to Part II of the Interstate Commerce Act. A Commission examiner has agreed with the latter conclusion. On June 10, 1937 the Motor Carrier Division of the Interstate Commerce Commission also ruled such operations to be those of contract carriers subject to its jurisdiction under the Motor Carrier Act of 1935. In a vigorous dissenting opinion in this last case, Commissioner Eastman denied that the Act applies to such carriers in any respect whatsoever.

Systems of Land Title Examination:
An Appraisal*

By HORACE RUSSELL† *and* DAVID A. BRIDEWELL‡

I. Introduction

IF THE National Housing Act Amendments of 1938,[1] approved February 3, 1938, accomplish the results which the President indicated were desirable in his recent housing message to Congress,[2] three million to four million dwelling units, involving a total expenditure of from twelve to sixteen billion dollars,[3] should be built in the United States during the next five years.

If this number of dwelling units is actually built, it will be necessary during that period to examine and pass upon approximately that number of titles to real estate, and to draft and supervise the execution of an approximately corresponding number of contracts to purchase real estate, deeds of conveyances and mortgages, as well as to perform the countless other details involved in such real estate and financing transactions.

Since the first step in purchasing the land upon which to construct housing facilities or in securing a mortgage loan to finance construction is proof of the title, it is timely to reconsider and weigh in the balance the efficiency of the various systems of real estate title examination or proof which are followed when a conveyance is made or a mortgage or deed of trust executed affecting real property.

II. Methods of Title Examination

The four principal systems of land title examination in use in the United States are: (1) *the abstract and attorney system*, under which an abstract of the public land records affecting the title is obtained from an abstract company, which abstract in turn is delivered to an attorney who renders an opinion on the title, based on his examination of the abstract; (2) *the attorney system*, under which the entire examination of the public land records affecting title and the opinion thereon are entrusted to an attorney; (3) *the title company system*, under which the entire examination of the public land records affecting the title is entrusted to a title company, which generally insures the lien or the title; and (4) *the land title registration system*, under which the title is registered under the Torrens or a similar land title registration system and the examination of the title registration certificate is entrusted to an attorney.

The above four systems of title exami-

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[1] Public No. 424, 75th Cong., S. 3055.

[2] *Congressional Record*, 75th Cong., 2d Sess., Vol. 82, pp. 641–3 and pp. 681–3; House Doc. No. 406, November 29, 1937.

[3] President Roosevelt in his message said: "Housing construction has not kept pace with either the needs or growth of our population. From 1930 to 1937, inclusive, the average annual number of new dwelling units constructed in the United States was 180,000 as contrasted with an annual average of 800,000 in the seven years prior to 1930. In addition, much of our existing housing has seriously deteriorated, or has been demolished.

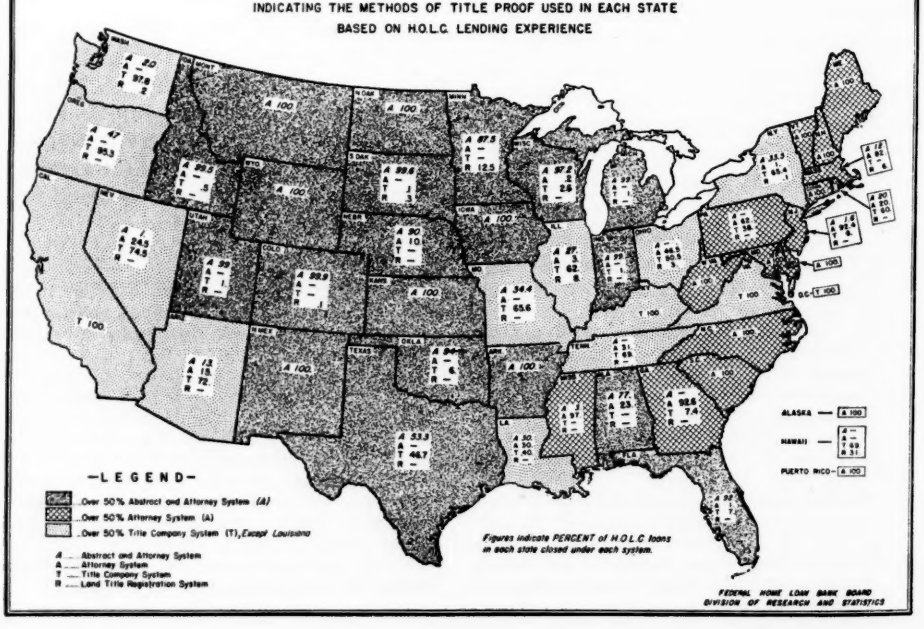
"It is estimated that an average of 600,000 to 800,000 dwelling units ought to be built annually over the next five years to overcome the accumulated shortage and to meet the normal growth in number of families. In other words, we could build over the next five years 3,000,000 or 4,000,000 housing units, which at a moderate estimate of $4,000 per unit would mean spending from $12,000,000,000 to $16,000,000,000, without creating a surplus of housing accommodations, and consequently without impairing the value of existing housing that is fit for decent human occupancy."

nation in turn may be classified under two headings: (1) public land record examination, under which the first three of the above systems would fall; and (2) title registration, under which the last of the above systems would fall. Map I, which is based on the lending experience of the Home Owners' Loan Corporation, shows the system of title examination generally used in each state and the percentage of loans which the HOLC closed under each system in each state.

Although 16 states have legislation now in effect providing for a title registration system, this system is not widely used except in four of the states and, even in these, only to a slight extent when compared with use of the other systems. Therefore, it may be said that the systems which are based upon a search of the public land records are almost universally used in this country.

In order to understand those systems which involve a search or examination of the public land records, it must be remembered that, in most if not all states today, all conveyances and all liens affecting real property, whether arising by virtue of contract or by virtue of state law, as well as all decrees of state courts, are required to be recorded in the recording office of the political subdivision of the state in which the real property affected is situated in order to constitute notice and be binding upon subsequent purchasers, judgment creditors, mortgagees, and other lienors of the property; and that, when proof is made of the validity of title prior to its purchase or mortgage, a search is made of these records in order to determine the status of the title.

In order to show a perfect record title under those systems which involve a



search of the public land records, it is necessary, of course, to show a continuous chain of title from a good source of title, such as a patent given by the United States Government to the first settler or buyer; and, in order to show a title which will be acceptable in the conveyancing or mortgaging of the property it is usually necessary to show a continuous chain of title for a period of from 20 to 40 years or supplement the chain of title with other evidence.

To illustrate the period of time required to be covered in the title search and the exasperating details involved in proving title, one lawyer in New Orleans, who had been advised by a department of the Federal Government that his title did not "go back far enough," wrote of his title search as follows:

"My abstract shows the title from the United States to the present time; the United States got it from France as part of the Louisiana Purchase; France got it from Spain by right of conquest; Spain got it by right of discovery, having financed the venture of Mr. Columbus; the King of Spain got his authority from the Pope of Rome; the Pope got his authority by being a descendant in the succession of Saint Peter; Saint Peter got his authority from God; and God created the earth."[4]

This is, of course, an exaggeration of the period of time required to be covered in title search and the work involved in title examination. Nevertheless, it illustrates the intricacies and absurdities involved.

However, in order to appreciate thoroughly the expense and wastefulness involved in those systems of title examination which involve a search of the public records, consideration should be given to at least one illustrative case.

Sometime during the first half of the last century, the Jumel property in New York City was subdivided into 1,383 lots and sold at a partition sale. Three hundred purchasers were present. If it be assumed that each of these persons, before the sale, followed the prudent course of employing an attorney or title company to examine the title to the lot which he contemplated purchasing, it is apparent that 300 attorneys or title companies would have had to examine the same records affecting the title to the entire property, no matter how small the lot his client wished to buy. In other words, 300 attorneys or title companies would have examined the same long lists of names; picked out from the 3,500 volumes of deeds, mortgages, etc., in the New York Registrar's office at that time the same big dusty volumes of writing, lifted them down, and looked them through.

If it is assumed that those 1,383 lots have since been resold by the original purchasers, it is likewise apparent that the 1,383 subsequent purchasers have paid 1,383 attorneys or title companies for examining the same titles. Furthermore, if it is assumed that those 1,383 subsequent purchasers have built upon the lots, giving a mortgage to secure a loan which was made to enable them to build, 1,383 mortgagees would likewise have paid 1,383 attorneys or title companies for an opinion on the validity of the title upon the security of which they proposed to lend, and in turn charged that expense against the borrowers when the loan was made.[5]

Although the title companies in New York have devised procedures whereby economies may be achieved in assuring title to purchasers in the case of such a subdivision of property as that described above, this illustration would probably

[4] From "The Practical Side of Land Acquisition," by Tudor Morsell, 1936 *Yearbook*, National Association of Housing Officials, p. 129.

[5] From "The High Cost of Title Search," by P. H. Mulholland, Registrar, Land Court, Territory of Hawaii, in *American Building Association News*, November, 1936, p. 513.

still be true in some of the states where it is necessary to examine the public land records.

When it is remembered that thousands upon thousands of documents are filed yearly in the average recorder's office and that many of these must be covered when a search is made with regard to any one title, the detail and time required to examine title under those systems which involve a search of the public records become apparent. Is it any wonder then that students of the problem are coming increasingly to recognize that the cumbersome, costly, time-consuming, and often unnecessary procedure required in examination of real estate titles under those systems which are based upon a search of the public records is one deserving of the most serious consideration?

However, the problem is by no means new. In fact, it is a problem as old as real estate titles themselves. The amazing thing about the situation is that practically all states in this country are still operating under the same system that was in effect in England during the eighteenth century, whereas England proper, 30 jurisdictions in the British Empire, and many other countries of the world have moved forward to a more inexpensive and expeditious procedure, i.e., the Torrens or land title registration system.

This backwardness of the various states in this country in devising a more inexpensive and expeditious system is all the more surprising when it is remembered that this country has reduced the price of cars, radios, and other luxuries and essentials to a minimum, has provided the most economic and expeditious methods of transportation, communication, and business technique, and in practically all other ways is the most progressive of all nations.

III. HOLC Land Title Experience

The participation of the federal housing finance agencies[6] in the field of mortgage lending on a nation-wide basis during the past few years has brought into focus more clearly than ever before the diversity of the various systems of real estate title examination, the cumbersome, costly, time-consuming procedures involved, and the ways in which these procedures have increased the initial cost of mortgage lending. Consequently, one of the first tasks assigned by the Central Housing Committee[7] to its Sub-Committee on Law and Legislation was a study of the above four systems of title examination with a view to determining the time required and the total costs involved under each procedure.

For this study, the Sub-Committee, which is composed of the General Counsel of the various federal agencies concerned with housing construction and finance,[8] selected at random 8,500 home

[6] Federal agencies which make or have made mortgage loans during the past five years are the Home Owners' Loan Corporation, the Farm Credit Administration, the Reconstruction Finance Corporation, and the Farm Security Administration (formerly the Resettlement Administration). Federal agencies, in addition to these, which are vitally interested in mortgage lending are the Federal Home Loan Bank Board, by reason of its supervision of private home mortgage-lending institutions; the Federal Savings and Loan Insurance Corporation, by reason of its insurance of the shares of private home-financing institutions; the Federal Housing Administration, by reason of its insurance of mortgage loans made by approved private mortgage-lending institutions; and the RFC Mortgage Company, by reason of the fact that it purchases FHA insured mortgages from private lending institutions, which originate and service the loans.

[7] The Central Housing Committee is composed of the administrative heads and staff assistants of the federal agencies dealing with or concerned with housing construction or finance.

[8] The membership of this Sub-Committee is as follows: Abner H. Ferguson, Burton C. Bovard, Federal Housing Administration; James L. Dougherty, Paul C. Akin, RFC Mortgage Company; Peyton R. Evans, H. J. Slaughter, Farm Credit Administration; Leon H. Keyserling, David L. Krooth, U. S. Housing Authority; Monroe Oppenheimer, Albert H. Cotton,

(*Footnote 8 continued on page 137*)

mortgage loans made by the HOLC in 10 states, approximately 500 loans being studied under each of the four systems in each state which employed that system.[9] The accompanying charts and tables,[10] based on the statistics gathered by the Sub-Committee in its study of these home mortgage loans made by the HOLC, summarize the results.

Because the HOLC chose wherever possible the least expensive and shortest method of handling title work, consistent with safety, because the total title costs arrived at in this study did not include cost to the Corporation of its salaried personnel who supervised the title examination, and because the practicing attorneys or title companies who examined the titles agreed to a reasonably smaller fee than they usually charge in return for the volume of business given them by the Corporation, the time and cost factors arrived at in this study were probably less than those for private individuals under ordinary conditions.

It should be pointed out, however, that this study of the title costs incurred by the HOLC included all costs in connection with examining and perfecting title under each method. For this reason, recording, escrow, survey, and loan closing costs, where incurred in connection with examination and perfection of a title or the closing of a loan, are included in the total cost of examining title under each method. Furthermore, this study of the time required for the HOLC to obtain a report on title covers the time elapsing from the request by the Corporation for a report on title until such report was furnished. Consequently, the total costs set forth in this study do not purport to represent what an individual attorney, abstract company, or title company would charge; nor do the figures, which represent the time required for the HOLC to obtain a report on title, purport to represent the time which is required for an individual attorney, abstract company, or title company to make a report on title.

A. Time and Cost Elements under Different Methods of Title Examination. From an examination of Chart I and Table I, it is clear that, according to the HOLC's experience, both the time required and the cost of obtaining a report on title varied widely under the four systems of title examination.

In the first place, it is interesting to note that from 16 days under the land title registration system in Massachusetts to 71 days under the title company system in Washington were required to obtain a report on title under these four systems. The range of time is illustrated by the following table:

Abstract and attorney	19 to 51 days
Attorney	19 to 24 days
Title company	36 to 71 days
Land title registration	16 to 46 days

Although these figures reveal that the time elapsing between reference of a case to the title examiner and receipt of the preliminary certificate of title was somewhat shorter under the attorney and Torrens systems than under the

(*Footnote 8 continued from page 136*)

Farm Security Administration; A. E. Denton, John J. O'Brien, Department of Justice; Horace Russell, Chairman, David A. Bridewell, Secretary, Federal Home Loan Bank Board.

[9] This study, which was made for the Sub-Committee by Mr. Wallace H. Walker, Associate General Counsel, HOLC, and Mr. Spurgeon Bell, Director, Division of Research and Statistics, HOLC, is contained in the Sub-Committee's Report No. 3, entitled "Land Title Procedure," copies of which may be obtained upon request from the office of the Central Housing Committee, Room 7032, North Interior Building, Washington, D. C.

[10] Reprinted with permission from the January, 1938 *Federal Home Loan Bank Review*. The two charts were prepared by W. H. Leef and the map by H. A. Lamberton, Division of Research and Statistics, Federal Home Loan Bank Board. The percentages of HOLC loans which were closed under each system in each state, as shown on the map, are based on statistics set forth in "Title Experience of HOLC," by R. P. Barclay.

others, it is apparent that the difference in time was not so marked as to justify a conclusion that they were superior. In fact, the Sub-Committee on Law and Legislation in its report pointed out that conditions and practices in the 10 states varied so greatly that no conclusions could be reached as to the time factor, even though the figures set forth were factually accurate as to the HOLC's experience.

Furthermore, examination of Charts I and II and Table I also shows wide variations in the average total title costs under these four systems. For instance, the average total title costs under the four systems are found to vary from $25 under the land title registration system in Minnesota to $62.13 under the title company system in New York. The following table presents the range of average total title costs:

Abstract and attorney	$34.20–$59.96
Attorney	39.39– 57.81
Title company	35.35– 62.13
Land title registration	25.00– 38.50

Viewed from the standpoint of average total title costs per $1,000 of loan, the variation is found to be from $6.02 under the land title registration system in Massachusetts to $19.89 under the title company system in Washington. The range of average total title costs per $1,000 of loan is illustrated by the following tabulation:

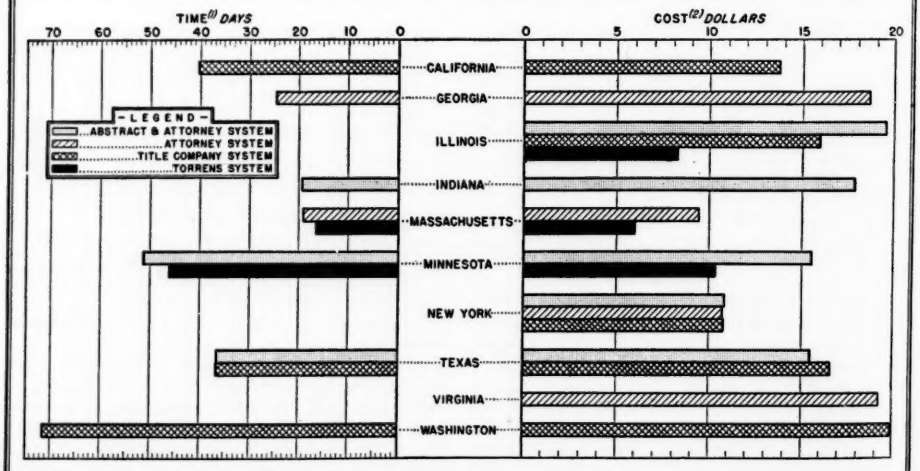
Abstract and attorney	$10.82–$19.55
Attorney	9.42– 19.24
Title company	10.78– 19.89
Land title registration	6.02– 10.38

In making these contrasts and in studying the charts and tables, it should be borne in mind that comparisons among the different systems are extremely difficult when based on costs alone. To make a perfect comparison it would be necessary, of course, to compare the total title costs involved in making a report on titles of like complexity under the various systems.

Furthermore, a comparison of total title costs under different systems of title

CHART I

SYSTEMS OF TITLE PROOF: AVERAGE TIME REQUIRED COMPARED WITH AVERAGE COST PER $1,000 OF LOAN, BASED ON H. O. L. C. EXPERIENCE



(1) Time elapsing between reference of the case to the title examiner and the receipt of preliminary certificate of title.
(2) Average total title cost per $1,000 of loan includes the cost of recording the instrument evidencing the lien taken by H.O.L.C.

Federal Home Loan Bank Board, Division of Research Statistics.

examination does not give a perfect comparison of the cost of like services. For example, under the title insurance and Torrens systems a greater degree of protection is probably received than under the other systems and it is to be presumed that the cost of such protection is mirrored in final costs. Likewise, variations in the value of the property affect the costs of title insurance.

In addition, certain long-range costs must be borne in mind when comparing costs under the different systems. For example, under the attorney system there is likely to be a recurring cost for examination of the entire chain of title in the public records at each transfer or encumbrance of the property. Consequently, the figures in Table I, showing the costs of a single transaction, would probably minimize the long-range cost of the attorney system. Similarly, the total title costs under the Torrens or land title registration system indicated in Table I do not take into account the cost of the initial registration of title. Such factors must be borne in mind, therefore, when a comparison is made among the different systems, based on costs alone.

Nevertheless, from these charts and tables it may be concluded that, based on the experience of the HOLC, the average total title cost of proving title under the Torrens or land title registration system was roughly ¾ of that under the three other systems of title examination, and that the time required to obtain a report on title under this system was, at least, less than that required under the other systems.

B. Time and Cost Elements under Identical Methods of Title Examination. Not only did the HOLC experience reveal wide variations in the time required and the total title costs under different systems of title proof, but also in the time required and the total title costs under identical systems of title proof in different states. Table I and the above text

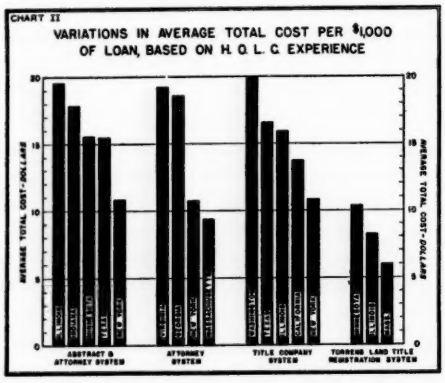
TABLE I. COMPARATIVE TIME AND COST ELEMENTS UNDER IDENTICAL METHODS OF TITLE PROOF, BASED ON HOLC EXPERIENCE*

State	Method	Average Loan	Average Time in Days[a]	Average Total Title Cost, less Recording[b]	Average Total Title Cost[c]	Average Total Title Cost per $1,000 of Loan
Illinois	Abstract and attorney	$2,392.57	.....	$41.90	(43.87) $46.79	$19.55
Indiana		2,267.42	19.4	38.09	(37.06) 40.43	17.83
Minnesota		2,196.87	51.4	29.70	(34.20) 34.20	15.56
New York		5,539.91	.....	53.57	59.96	10.82
Texas	Attorney	2,386.28	36.5	33.75	(36.64) 37.00	15.50
Georgia		2,258.58	24.6	35.55	42.00	18.59
Massachusetts		4,179.43	19.2	33.07	39.39	9.42
New York		3,672.94	.....	35.40	39.50	10.75
Virginia[d]		3,003.54	.....	53.19	57.81[d]	19.24[d]
California		2,571.96	40.4	30.80	35.35	13.74
Illinois	Title company	3,409.31	.....	49.07	54.33	15.93
New York[e]		5,760.76	.....	55.78	62.13[e]	10.78[e]
Texas		2,155.05	36.6	32.47	35.67	16.55
Washington		1,831.59	71.4	30.27	36.44	19.89
Illinois	Torrens	4,657.97	.....	35.45	38.50	8.26
Massachusetts		5,283.01	16.5	26.59	31.82	6.02
Minnesota		2,406.51	46.1	21.12	25.00	10.38

* From Special Report No. 3, "Land Title Procedure," Sub-Committee on Law and Legislation, Central Housing Committee.
[a] Time elapsing between reference of the case to the title examiner and receipt of preliminary certificate of title. Where no figures are given, elapsed time was not tabulated.
[b] Difference between total cost and cost of recording the instrument evidencing the lien taken by HOLC.
[c] Figures in parentheses represent average cost in continuation abstract cases.
[d] These titles are also insured.
[e] These titles are not insured.

tables also supply the data for comparing variations in time and cost factors by systems in different states.

Table I shows that more than twice as long was required to obtain a report on title under the abstract and attorney system in Minnesota as in Indiana; that



Federal Home Loan Bank Board, Division of Research and Statistics.

about twice the time was required under the title company system in Washington as in Texas; and that more than twice as long was required under the land title registration system in Minnesota as in Massachusetts.

This table also shows that the average total title cost under the abstract and attorney system in Illinois was approximately ⅓ higher than the cost under that system in Minnesota; that the average total title cost in Virginia under the attorney system was approximately ⅓ greater than the cost under that system in Massachusetts; that the average total title cost in New York under the title company system was nearly twice the cost under that system in California; and that the average total title cost in Illinois under the land title registration system was approximately ⅓ greater than in Minnesota.

This comparison of average total title cost under the same system in different states is subject to many of the qualifications which were indicated above in the comparison of total title costs under different systems. For instance, a comparison of the average total title costs under the same system in different states does not always indicate a perfect comparison of the cost of like services. Thus, average total title cost under the attorney system in Virginia includes an insurance premium, whereas in all other states using this system the title is not insured. Likewise, total title cost under the title company system includes an insurance premium in all states except New York.

Furthermore, in so far as average total title cost depends on the length of the chain of title and its complexity, a comparison of average total title costs under the same system in different states would not be indicative of the cost of like services. For instance, in some of the old eastern states where property has changed hands many times, the chain of title is bound to be much longer than in the newer western states. Therefore, other factors being equal, it is to be expected that average total title cost would be greater in the former states. Likewise, if a tract had been in the hands of a single family for a century, examination of title probably would be very simple and total title cost relatively inexpensive. On the other hand, if the real estate has changed hands frequently, as it does in speculative areas, such as certain sections of Florida, the chain of title would be much longer and, as a consequence, total title costs should be higher. The figures in Table I do not, of course, indicate how far such factors have influenced the costs under any one system in the various states.

In addition, the total title costs in a given state also may be influenced by conditions prevailing in that state; e.g., there appears to be a tendency, where the total title cost of one method is low in a given state, for other methods also

to be low, which may indicate the presence of competitive forces. Likewise, in some states it was necessary to obtain a new or original abstract in order to prove title, whereas in others only a supplemental one was required. The cost of preparing a new abstract is, of course, greater than that of a supplemental one; and, for that reason, this factor may distort a comparison.

Nevertheless, if it be conceded that the lowest total title cost under each system in the various states is an adequate price to pay in all states, then real property owners in those states where the cost is in excess of that in states where it is least are paying an excessive amount.

Again, if it be conceded that the shortest time for obtaining a title report under a given system is an adequate time within which a title report may be furnished, then those property owners who use that system, in states where the time required is in excess of this minimum, are waiting too long for a report on their titles.

In any event, it is evident from this study of the title experience of the HOLC that there are great variations in the time required and the average total title costs under identical systems in different states. Therefore, those interested in the question of land titles in states where the time required and the total title cost are in excess of the minimum would do well to study the systems in the latter states, in order to bring the time and cost factors in title examination in their states into closer harmony with those minima.

Some indication as to why total title costs under different systems in the same state and under the same system in different states vary so greatly may be obtained from a study of the separate elements of cost which go to make up average total title cost under each system.

C. Elements of Cost in Total Title Cost. Table II shows the principal elements of cost which went to make up the average total title cost of proving title under each system in the 10 states,[11] the states being grouped by systems of title examination so as better to illustrate the variations in the elements of cost under each system.

By reading the figures opposite each state across the page, the number and cost of the different elements which went to make up average title cost under each system in that state are apparent. For example, under the abstract and attorney system, the major elements of cost are the abstract, title examination, recording, and, in some instances, closing fee; and these fees together account for approximately 90% of the total cost in all states studied which follow this system of title examination. Under the attorney system, the principal element of cost is the title examination fee, which accounts for approximately 80% of the total cost.

By reading down the columns in this table, the variations in the cost of each major element in average total title cost under identical and different methods of title proof are also apparent. For example, by reading down the column headed "Average Title Examination Fee," it is seen that average cost of title examination under the abstract and attorney system in Illinois was approximately four times greater than that in Indiana; that this cost under the attor-

[11] It should be noted that Table II includes only the major elements in average total title cost and that these major elements are themselves expressed as averages. Furthermore, the figures given in the last column are the average total title costs and not the mathematical sum of the major elements in the preceding columns. Therefore, in this table, such figures merely serve as a guide in judging the *relative* importance of each major element in total title cost.

TABLE II. ELEMENTS OF TOTAL TITLE COST, BASED ON HOLC EXPERIENCE IN 10 STATES

System	State	Average Abstract Fees			Average Title Examination Fee	Average Recording Fees		Average Closing Fee	Average Attorney Fees	Average Survey Cost	Average Title Insurance Fee	Average Escrow Fee	Average Release Fee	Average Torrens Fee	Average Total Title Cost
		New	Continuation	Federal Title Search		Original Papers	Releases, Waiver, etc.								
Abstract and attorney	Illinois	$41.96	$13.96	$1.78	$23.27	$4.89	$1.32								$46.79
	Indiana	54.61	21.73	1.02	6.98	2.34	1.65	$6.58[a]							40.43
	Minnesota		10.97		16.31	4.50	0.76								34.20
	New York	20.93				6.39	6.59	16.70							59.06
	Texas		14.08		12.26	3.25	2.38	4.13							37.00
	Georgia					6.45[c]	1.15		$30.03[b]	$6.57					42.00
Attorney	Massachusetts				14.86	6.32[c]		9.17		8.88					39.39
	New York				33.53	4.10	1.79			7.10					39.50
	Virginia[d]				34.15	4.02	0.62				$9.48	$7.53	$3.90		57.81
	California					4.55	3.16	18.65			20.86				35.35
	Illinois					5.30	2.39	15.84		14.95	25.47				54.33
Title company	New York[e]				33.81[f]	3.35	6.18	5.00			28.73				62.13
	Texas	39.89	12.02	2.00		3.20	2.01		9.14		19.98	7.69	3.81	$3.13[g]	35.67
	Washington					6.17	1.09	18.65							36.44
	Illinois					3.01[c]	7.05	8.94							38.50
Torrens	Massachusetts				20.12	5.23[c]								5.67	31.82
	Minnesota				14.23	3.88	0.62								25.00

[a] Includes fee escrow service costs.
[b] Includes abstract, certificate, closing, and title insurance fees.
[c] Average of recording fees both for original papers and release.
[d] These titles are also insured.
[e] These titles are not insured.
[f] Average title certificate fee.
[g] For continuation of owner's duplicate certificate of title.

ney system in Virginia was approximately ⅓ greater than that in Massachusetts; and that this cost under the Torrens system in Massachusetts was approximately ⅓ greater than that in Minnesota.

The column entitled "Average Abstract Fee—New" shows that the average cost of a new abstract in Indiana was approximately ⅔ more than that in New York; and the column entitled "Average Abstract Fee—Continuation" shows that the average cost of the continuation of an abstract in Indiana was more than twice the cost in Minnesota. Similar variations are revealed in the other columns of this table.

From this study of the title experience of the HOLC, the Sub-Committee on Law and Legislation was of the opinion that both the time and cost factors involved in title examination under all four of these systems, as well as the elements of cost in total title cost, could be and should be reduced. Since a decrease in title costs results in a decrease in the initial cost of a home mortgage loan, it is apparent that this is a very important factor in a mortgage market in which every effort is being made to stimulate home ownership by decreasing the initial and current charges for the credit which a prospective home owner must incur in buying his home.

IV. Criticisms of Existing Methods

Besides the excessive time and cost usually involved in title examination, still other criticisms may be levelled at each of these systems.

For instance, the attorney system does not afford an absolute guarantee as to title nor a guarantee of recoupment in case of loss through defective title because the attorney's opinion is usually based almost entirely on his examination of the public records; if he is negligent

in searching the records and rendering an opinion, liability may be enforced against him only up to the extent of his personal resources.

The abstract and attorney system is subject to somewhat the same criticism. In addition, since the attorney's opinion is based almost entirely upon the abstract and since the certification of the average abstract company is so drafted as to limit its liability to the records and time covered by the abstract, it is apparent that there is even less possibility of recoupment in case of loss through defective title.

Furthermore, the average title insurance certificate or policy is often so couched with exceptions as to substantially limit the liability of the issuing company in case of a defective title. Finally, the land title registration laws in many states are almost unworkable either because they were poorly drafted or because provisions were inserted before their enactment at the instance of adverse interests which makes them impracticable.

The Sub-Committee on Law and Legislation of the Central Housing Committee, in an endeavor to remedy to some extent the above defects in the first three methods of title examination, has collected a set of forms which federal agencies have required to be used in some instances when title work was done for them and which it recommends for the consideration of lending institutions.[12] If lending agencies and others securing assurance of title would insist upon better forms of title evidence, such as those set forth in this report, there would be less risk in lending on the security of real estate as well as in its purchase.

It is also believed that, if the land title registration laws of those states which now have such a system were amended in the manner indicated later in this article, such laws would be more workable, efficient, and economical.

The three systems which involve an examination of the public records are also subject to a criticism which is directed not so much at the system of title proof as at the extent to which the examination covers matters that might affect the title. In order properly to understand this criticism, it should be pointed out again that, in most states today, all conveyances and all liens affecting real property, whether arising by virtue of contract or by virtue of state law, as well as all decrees of state courts, are required to be recorded in the recording office of the political subdivision of the state in which the real property affected is situated in order to constitute notice and be binding upon subsequent purchasers, judgment creditors, mortgagees, and other lienors of the property.

On the other hand, liens or changes in title arising by virtue of decrees rendered in federal courts and liens arising by virtue of federal law, such as those attaching to property for non-payment of certain federal taxes, are not in all cases required by federal law to be recorded in the recording office of the political subdivision of the state where the real property is situated in order to constitute notice and be binding upon such subsequent parties.[13] This fact prevents

[12] These forms, which were collected and edited for the Sub-Committee by Messrs. John J. O'Brien, Attorney, Department of Justice; Burton C. Bovard, Assistant General Counsel, FHA; Thomas A. Sherman, Associate Counsel, HOLC; and David A. Bridewell, Assistant to the General Counsel, FHLBB, are contained in the Sub-Committee's Report No. 6, entitled "Forms of Title Evidence," a copy of which may be obtained upon request from the office of the Central Housing Committee.

[13] It is true, of course, that §3186, U. S. Revised Statutes, does provide that a lien in favor of the United States, arising by virtue of non-payment of federal taxes, shall not "be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof

(*Footnote 13 continued on page 144*)

the records of the various local recording offices from properly reflecting the status of all changes in title or liens outstanding against a piece of property within their jurisdiction. Consequently, in order to be absolutely certain of the status of the title to any piece of real estate, it is necessary that a search be made of both the records of the local recording office and those of the federal district court for the district in which the real estate is located. Since the records of the local recording offices in all states do not contain notice of these federal liens, and since in some cases title examination under those systems which involve a search of the public records is based entirely upon a search of the local records, it is apparent that in some instances, at least, the title search and investigation may not cover all matters which may affect title.

The Sub-Committee on Law and Legislation, after making an intensive study of this problem, has drafted a proposed federal act which would require notice of liens arising by virtue of federal law in favor of the United States, or any department, agency, or instrumentality thereof, to be filed in the recording office of the political subdivision where any real property affected by such liens or decrees is situated in order to be valid against subsequent purchasers, mortgagees, or judgment creditors.[14] Enactment by Congress of such a proposed federal act would mean the consolidation in the various recording offices of notice of practically all liens, whether arising by virtue of federal or state law, affecting real property located within the jurisdiction of the recording office. Such consolidation would of course decrease the risk and expense of title examination under all methods involving a search of the public records.

V. Land Title Registration System

It was pointed out above that, according to the study of the title experience of the HOLC, the Torrens or land title registration system is probably the most economical and expeditious system after a title once has been registered. In addition, under the Torrens system, there is practically no possibility of loss arising through defective title, as the state land court or other administrative judicial body having charge of the registration gives the owner a certificate of title which is good against everyone, any subsequent claimant who is able to show a better title than the registrant being compensated by the registration fund. After the original registration, all subsequent dealings with the land are entered on the certificate and no new examination of the previous records is needed.

Torrens, or similar land title registration laws, are now in effect in 16 states[15] and in four jurisdictions under the sovereignty of the United States.[16] However,

(*Footnote 13 continued from page 143*)

has been filed by the collector—(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, wherever the State or Territory has by law provided for the filing of such notice; or (2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; . . ." However as all states have not passed statutes providing for the filing of notice of such United States liens, the Federal Government has not been able to adopt the procedure of filing notice of its liens in the local recording offices in states other than those which have passed such statutes. Consequently, the records of the local recording offices of all states do not contain notice of such United States liens for non-payment of taxes.

[14] These proposed federal acts, which were drafted by Mr. Thomas A. Sherman, Associate Counsel, HOLC, as well as the Sub-Committee's report with regard to same, are contained in its Special Report No. 7, a copy of which may be obtained upon request from the Central Housing Committee.

[15] California, Colorado, Georgia, Illinois, Massachusetts, Minnesota, Nebraska, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Virginia, Washington.

[16] Hawaii, Philippine Islands, Puerto Rico, and Guam.

the land title registration system has not been of great success in any of these jurisdictions with the exception of Illinois, Hawaii, Massachusetts, and Minnesota.

According to Map I, the extent to which the HOLC made loans on Torrens titles in these jurisdictions, expressed in terms of the percentage which the total loans made under that system in each particular jurisdiction bore to the total loans made in each such jurisdiction, is as follows: Hawaii, 31%; Minnesota, 12.5%; Illinois, 8%; Massachusetts, 6%; Ohio, 3%; Washington, .2%; Colorado, .1%; South Dakota, .03%. From these percentages it is apparent that in only eight of the 17 jurisdictions in which land title registration laws are in effect did the HOLC make any use of Torrens certificates and in only the four jurisdictions already named can the use of Torrens certificates be said to amount to any considerable proportion of the total evidence of title.

The probable reasons why the land title registration system has not proved successful are as follows: (1) the legislation providing for such system may be unworkable either because the laws were poorly drafted or because provisions, inserted at the time of their enactment at the instance of adverse interests, make them impracticable; (2) the expense of the original registration of title, which averages $150, including attorney's fees, may be too excessive to justify greater demand for such registration, especially on the part of small-home owners; (3) the credit of the state may not have been pledged or a sufficient assurance fund accumulated to assure prospective registrants of the ability of the fund to satisfy any claims that may arise in case of defective title.

Although the Sub-Committee on Law and Legislation in its report points out that it believes that the original cost of land title registration is actually commensurate with the protection received in Hawaii, Illinois, Massachusetts, and Minnesota, it further indicates that it believes the initial or original cost of registration can be and should be reduced in those states where the system is in successful operation. Even in those states where the system has not been in operation sufficiently long to build up an assurance fund, the original fee could well be reduced if the credit of the state were pledged.

Substantial assurance funds have been accumulated in Massachusetts, Illinois, and Minnesota. Although there is no assurance fund in Hawaii, the credit of the Territory of Hawaii is pledged to guarantee the titles. During 38 years of successful operation of the Torrens law in Massachusetts, an assurance fund in excess of $255,152.72 has been accumulated.[17] A registered title is furnished, which is backed not only by such assurance fund but also by the credit of the Commonwealth. During this entire period, only three claims, in a total amount of $2,300, have been filed against the Massachusetts fund. It is apparent, therefore, in this State at least, that a higher charge is being made for registration than the risks involved necessitate.

The National Conference of Commissioners on Uniform State Laws has drafted a uniform land title registration law which has been recommended to the various states for enactment. The Sub-Committee on Law and Legislation has

[17] See House No. 427, January, 1938, Massachusetts. Section 106 of Chapter 185 of the general laws of Massachusetts provides that, after the fund has reached the amount of $200,000, the income therefrom shall be credited to the general fund for the purpose of defraying, as far as possible, the expenses of the administration of the law relative to the land court and the registration of title to land. For a discussion of the operation of the land title system in Massachusetts, see a pamphlet, "Land Title Registration in Massachusetts" (1937), by Clarence B. Humphrey, Engineer for the Court, a copy of which may be obtained from the Land Court, Boston, Massachusetts.

studied this proposed legislation and is of the opinion that it can be further improved upon. Therefore, it is redrafting the act according to the conclusions of this study.[18]

The major improvement which will be incorporated in this new draft will be the reduction of the high average initial cost which makes land title registration in most of the states at present entirely out of the question in many instances for small-home owners and which was shown above to be disproportionate to the risks involved in at least one state. The redrafting of this act will also eliminate all exceptions from the certificate of title with the probable exception of interests of the United States in the land. In addition, there will be three methods under which land titles may be registered:

(1) A long, expensive method such as that now in effect in most of the states having such a law and such as that provided for in the Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws, i.e., state examination of title with court confirmation prior to registration, which would necessitate a high initial cost for registration, but insurance of the title against all defects both prior to and after registration, probably excepting interests of the United States in the land;

(2) A shorter and less expensive method whereby the land would be registered by the state on the basis of a responsible title certificate or an attorney's opinion with a fee approximately half of that required in (1) above, but which fee would cover, in addition to the expense of registration, the insurance[19] of the title up to a designated maximum amount against all defects both prior to and after registration, with the probable exception of interests of the United States in the land; and

(3) A still shorter and less expensive method whereby the land would merely be registered by the state on the basis of a responsible title certificate or an attorney's opinion, with no provision for insurance. After expiration of the statute of limitations provided for in the Act, a registration certificate could be obtained as a matter of right on a title registered under the second and third methods of registration. This certificate would be as good and indefeasible as that obtainable under the first method.

Although the expense of the original registration of land under the first system might be too high for the ordinary purchaser of a home, under the new proposed draft two more economical alternatives would be provided.

On the other hand, if a developer of a new subdivision would get his whole tract registered under the first system, before any subdivision took place, the cost of registered title per lot would be nominal and the purchasers would be saved the expense of getting an absolutely guaranteed title or of resorting to the expedient of taking a certificate which was not absolutely guaranteed until the period of limitations had run.

If states not having such a system would adopt the Sub-Committee's proposed land title registration law and other states would amend existing laws to conform with the new draft, title costs in the purchase, mortgage or sale of real estate would be materially reduced, little or no risk would arise from defective titles, and real estate titles generally would be better and more stable.

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[18] This proposed uniform act is being drafted for the Sub-Committee by Wallace H. Walker, Associate General Counsel, HOLC, and Paul C. Akin, Attorney, RFC Mortgage Company.

[19] In this connection it is interesting to note that out of a total premium income to title insurance companies of $12,091,125 in 1919 only $298,738 was paid out for losses sustained by the assured. See Huebner, *Property Insurance* (New York: D. Appleton & Co., 1922), p. 479.

A Critique of the Federal Power Act

By LESTER V. PLUM*

I. Introductory

THE Public Utility Act,[1] passed by Congress in 1935, brought about the most far-reaching change in the status of regulation of the electric power industry that has occurred since the beginning of regulation by state commissions. Because of the widespread interest attracted by the so-called "death sentence" provisions, the part of this law which has received major emphasis is that dealing with regulation of holding companies by the Securities and Exchange Commission.[2] As a result, the other part of the legislation, which is known as the Federal Power Act[3] and which gives the Federal Power Commission jurisdiction over operating companies, has not received publicity commensurate with its importance. Sufficient time has elapsed since the law was passed to warrant a critical analysis of this part of the legislation and an attempt to appraise its importance.

No consideration will be given to the effect of changes in the Commission's licensing jurisdiction with respect to water-power projects[4]—an authority originally granted in 1920.[5] Attention will be limited to the Power Commission's new-found jurisdiction over "public utilities,"[6] defined as companies owning or operating facilities for transmission or sale of electricity in interstate commerce. This jurisdiction gives the Commission for the first time a share (along with the Securities Commission) in federal regulation of the electric power industry, irrespective of any federal interest in "conservation" of water-power resources.

The two main objectives of the legislation are (1) to bring about coordination of power properties through interconnection of facilities and interchange of energy; and (2) to supplement and strengthen, but not to supersede, the regulatory authority of the states. The writer's thesis is that, although attainment of the first objective is beset by so many difficulties that no substantial achievements can be expected, the other provisions of the law will have far-reaching effects upon the efficiency of regulation provided they are wisely administered. With respect to a number of matters, however, state and federal authority will overlap, and the attainment of more efficient regulation without unduly encroaching on the authority of states to regulate matters essentially of local concern will depend upon the extent to which the Power Commission makes use of cooperative procedure and courts the good will of state commissioners by tactful deference to their views. In order to prepare the reader for the development of this thesis the major provisions of the law will first be summarized, and the definition of a "public utility" will be clarified.

Summary of the Act. To promote coordination of facilities, the Power Commission has authority to study and en-

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[1] Public 333, 74th Congress.

[2] Title I, The Public Utility Holding Company Act.

[3] Title II: Part 1 of this title consists of amendments to the Federal Water Power Act of 1920; Parts 2 and 3 provide for additional jurisdiction over interstate operating companies.

[4] Title II, Part 1. For a discussion of one of these changes see the writer's article entitled "The Definition of Navigable Waters and the 'Doctrine of Minor Interest,'" 13 *Journal of Land & Public Utility Economics* 398 (1937).

[5] 41 Stat. 1063.

[6] Title II, Parts 2 and 3. Unless otherwise indicated, all references are to these parts of the law.

courage voluntary interconnections and, in certain limited cases, to compel interconnection of properties and interchange of energy. It may also prevent public utilities from transferring electric facilities to other companies through sale, lease, or merger; and it may attach any conditions that are "in the public interest" when transfers of properties are approved. In addition, no public utility may acquire securities of another electric utility company without obtaining the Commission's consent.

In supplementing the regulatory authority of the states, the Commission is empowered to regulate the wholesale rates charged for energy moving in interstate commerce, a matter which the courts have held to be beyond the direct control of the states. It can also regulate security issues by public utilities if the state of incorporation has no authority, and can break up interlocking relationships of officers and directors of electric utility companies, in order to guard against financial manipulation. To facilitate the regulation both of security issues and of rates, the Commission may require uniform accounting, prescribe depreciation rates, and make valuations of properties. Two provisions of the law that may prove to be of great benefit to certain state commissions are that the Power Commission may conduct investigations and make its findings available to them, and that it may lend its experts as witnesses in administrative or judicial proceedings. Further evidence of the intent of the lawmakers to encourage state and federal cooperation is found in the provisions authorizing the Commission to hold joint hearings with state commissions and to refer any matter under its jurisdiction to "joint boards" composed of representatives of interested states.

Meaning of "Public Utility." The provisions of the law that indicate what companies are subject to all this federal regulation are, unfortunately, ambiguous. Any company that comes within the statutory definition of a "public utility" is subject to the Commission's jurisdiction, but the definition itself is not clear. Thus, a "public utility" is defined as a company that owns or operates *facilities* subject to the Commission's jurisdiction[7]—as if it were the inanimate physical assets rather than the business associations that are subject to regulation.

The ambiguity is increased because the law provides that the Commission shall not have any jurisdiction over generation or distribution facilities, "*except as specifically provided*" *elsewhere.*[8] Elsewhere in the law, however, the Commission is specifically given authority to regulate activities relating to properties used for generation and distribution as well as for interstate transmission. For example, the Commission may regulate accounting practices with respect to the generation and distribution of electricity. One might well ask, if the Commission has jurisdiction over generation and distribution properties so far as accounting methods are concerned, is ownership of such properties itself sufficient to bring a company within the definition of a "public utility" and to subject it to complete federal regulation? Or must the Commission first prove that the company is a "public utility" according to some other test before it can assert any jurisdiction over accounting?

The Commission's Counsel, in an unpublished opinion,[9] has attempted to

[7] §201 (c).
[8] §201 (b).

[9] Memorandum Opinion of Oswald Ryan, General Counsel of the Federal Power Commission, to the Legal

(*Footnote 9 continued on page 149*)

clarify the concept of a "public utility." In the first place, a company may be a "public utility" because it *sells* power at wholesale in interstate commerce, even though it neither owns nor operates any interstate transmission facilities.[10] Indeed, a company that owns no transmission facilities at all, but wholesales power in interstate commerce over the purchasing company's lines, would be subject to federal regulation. Furthermore, the Commission's authority would not be limited to rate regulation.[11]

On the other hand, a company may be a "public utility" because it *owns or operates* a certain type of *facilities*. Thus, mere ownership or operation of properties by means of which energy is *transmitted* in interstate commerce is sufficient to subject the company to regulation, even in the absence of any evidence of an interstate *sale*.[12] This interpretation enables the Commission to regulate companies that *receive* power in interstate commerce as well as those that deliver it.[13] It is also important to note that a company may be a "public utility" because it owns or operates facilities used for interstate transmission, although the facilities themselves do not cross a state line.[14] Thus, a company which owns no facilities crossing a state line but which delivers or receives power in interstate commerce by connecting with another company's lines would be subject to regulation. The only exception occurs when the company receiving the energy owns no transmission facilities at all. The company would not be subject to regulation merely because its interconnected distribution facilities were located in two contiguous states.[15]

Other exemptions are evident from a careful reading of the law. Thus, a company which imports energy from a foreign country and does not transmit or sell the power in interstate commerce would not be subject to regulation. This is clear because the declaration of policy in the law omits any reference to transmission in foreign commerce,[16] and because the Act subjects transmission facilities to federal jurisdiction "only insofar as such transmission takes place within the United States."[17] Likewise, companies whose only interstate activities consist of the sale of power in interstate commerce to industrial concerns for their own use would be exempt from regulation, in view of the fact that the law declares the "public interest" to be concerned only with interstate transmission and sale of energy for "ultimate distribution to the public."[18] At least, a company transmitting energy in interstate commerce solely for its own use would not be a "public utility."[19] Finally, a company cannot be subjected to federal regulation merely because its transmission lines cross part of a contiguous state, if the power is consumed in the state in which it is generated.[20]

(*Footnote 9 continued from page 148*)
Division of the Commission on the Meaning of "Public Utility," as used in the Federal Power Act, February 8, 1936. Hereafter cited as "Counsel's Opinion."

[10] *Ibid.*, pp. 4–5. The argument seems to be that, since the Commission can regulate wholesale rates, the company selling the power subjects itself to full federal regulation.

[11] *Ibid.*, p. 4.

[12] Certain interchange agreements might not involve payments that could be held to be "interstate rates."

[13] Counsel's Opinion, p. 7.

[14] *Ibid.*, p. 9.

[15] *Ibid.*, pp. 10–2.

[16] §201 (a).

[17] §201 (c). It is not likely, however, that companies engaged in exporting power to a foreign country would be exempt, because the Commission is specifically granted authority over one of their activities—the sale of power for export to a foreign country.

[18] §201 (a). However, a company engaged *solely* in selling power to a public service company for resale to the public would be subject to regulation, although it would not be considered to be a public utility in some state jurisdictions.

[19] §201 (b).

[20] §201 (c).

Despite these exceptions it is evident from the Counsel's opinion that a substantial part of the industry will be subject to the law. If this interpretation of the Act is sustained by the courts and if the amount of energy moving in interstate commerce does not decrease substantially, the Counsel's estimate that the major activities of the Commission will have appreciable effects upon 60% of the 12½ billion dollars of electrical utility assets in the industry[21] appears to be conservative.

II. Coordination of Power Properties

In the last few years much attention has been given to the advantages that would accrue to the public from coordination and interconnection of power properties. It has been said that use of so-called power "pools" would provide more security against interruptions of service and would lessen the need of "stand-by" facilities by improving load factors. In the hearings on the power bill in 1935 Mr. De Vane, Solicitor of the Commission, declared that promotion of coordination in the industry was one of the main objectives of the proposed legislation.[22] But the provisions of the law as signed by the President, when they are carefully scrutinized, suggest that the Commission's authority to "rationalize" the power map may be the least effective of any of its new-found powers.

Voluntary Coordination. The Commission is directed to divide the nation into power regions and to encourage interconnection both within and among them. But it is significant that, with two exceptions, interconnections are to be made *voluntarily*.[23] How the Commission is to overcome intercompany jealousies, or obstacles arising out of "strategic" or "nuisance" values of properties, which are said to have prevented interconnection in the past, is not indicated.

Subjecting companies to federal regulation of rates and other matters just because they transmit or sell power in interstate commerce may itself deter voluntary coordination and interconnection of properties to some extent. The threat of federal regulation may prevent companies from establishing interstate connections which would otherwise have been made and which, in all probability, would have been advantageous to the consuming public. The Commission has no authority to order an extension of generating facilities to provide power for use in another state, nor does it have any right to dictate where new facilities must be located.[24] Mr. Willkie testified before the House Committee that he was afraid the law would even cause some companies to discontinue present interstate connections.[25] In August, 1935, a few hours before President Roosevelt signed the Power Act, a group of operating companies in Connecticut did cut their interstate lines, and if federal regulation becomes onerous it is conceivable that other companies will do the same. The Commission could prevent sale of interstate facilities to other companies,[26] but it could not prevent a company from abandoning *use* of those facilities for interstate transmission or sale of power.[27]

[21] Ryan, Oswald, "The Power Act of 1935," 18 *Public Utilities Fortnightly* 3 (July 2, 1936), p. 5.

[22] Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, on H. R. 5423 (1935), p. 549. Hereafter cited as "House Hearings."

[23] §202 (a).

[24] The provisions of the bill giving the Commission authority over extensions and abandonments were removed in committee (79 *Cong. Rec.* 8158).

[25] House Hearings, p. 635.

[26] §203.

[27] It is probable that the Commission will ask Congress for an amendment to the law granting authority over abandonments.

Compulsory Coordination. If a company is subject to the Commission's jurisdiction because it is already voluntarily transmitting, selling, or receiving energy in interstate commerce, the Commission may require the company to provide an additional interconnection for the sale of power in interstate commerce provided application for such action is made by a state commission or by an electric utility company. But the Commission's authority, even then, is narrowly circumscribed. In its order the Commission may not "unduly burden" any utility, nor may it compel the enlargement of generating facilities for the purpose of interchanging power. Moreover, it cannot impair a company's ability to render service to its own customers.[28]

A second condition under which the Commission can compel interconnection is that of war or "emergency." In such an event the Commission's authority is much broader and is limited only by the provision that its orders must "best meet the emergency and serve the public interest."[29] However, the Commission has construed the word "emergency" narrowly enough so that this extraordinary authority will be available only under exceptional circumstances, such as the breakdown of service as a result of major catastrophes.[30] The interconnections in such cases would probably be temporary.[31]

Assistance from States. If the Commission has such limited authority to compel interconnection of facilities and interchange of power, how may the Commission put its plan for coordinated power regions into effect? It might accomplish something by inducing state commissions to cooperate in exerting state authority. While the states individually are probably unable to cope with the major problems of coordinating properties extending beyond state lines, they could be of some help to the Power Commission if, in regulating intrastate matters, they gave due consideration to the proposed federal plan for coordinating properties over a larger area. However, it may be difficult to obtain even this minimum of state assistance because of the existence of local self-interest. For example, the Michigan Commission, among others, has objected to the Commission's tentative plan on the ground that it would benefit other regions at the expense of consumers within the State.[32]

Regulation of Power Exports. Indeed, there is one provision in the law which expressly recognizes state self-interest, and which appears to be contrary to the ideal of coordinating power properties according to economic regions without regard to state lines. On the pretext of conserving natural resources, but actually for the purpose of discriminating in favor of their own citizens, four states now regulate exports of hydro-electricity. The Wisconsin, New Hampshire, and West Virginia commissions may prohibit the export of energy whenever it is "needed" in the state. No export of energy from Maine is allowed unless expressly authorized by the Legislature, and very little power is exported. Some

[28] §202 (b). When an interstate connection already exists, the Commission, upon receiving a complaint from a state commission, may order "adequate" interstate service. The Commission's authority is again limited, however, by the first two exceptions noted above (§207).

[29] §202 (c).

[30] FPC, "Rules of Practice and Regulations with Approved Forms," revised to January 1, 1937, p. 70. Hereafter cited as "Rules and Regulations."

[31] In order to encourage power companies to cooperate with the Commission during an emergency the law provides that companies which are not already subject to the Commission's jurisdiction may make interstate connections for the period of the emergency, or permanent connections that are to be used only during emergencies, without thereby becoming "public utilities" subject to federal regulation (§202 (d)).

[32] FPC, *News Digest*, October 29, 1936, p. 2.

students have seriously questioned the constitutionality of this legislation because it "burdens" interstate commerce. The Federal Power Act, however, might well be construed as granting federal *permission* to burden commerce in this way, and might make it impossible to void any discriminatory state action on constitutional grounds. The law declares that no state may be deprived of its "lawful authority" now exercised over the exportation of hydro-electricity.[33]

For the purpose of discriminating in favor of the United States the Power Commission has authority to prohibit exports of electricity to a foreign country.[34] This authority is declared to be necessary for the coordination of power facilities,[35] but the fact that the Commission has no authority to regulate imports of energy into the United States suggests that the primary purpose was to assure preferential rights to American consumers.[36] It is conceivable that imports as well as exports might interfere with coordination of facilities in accordance with the Commission's plan for the United States. By importing power, for example, a company might dispense with the necessity of cooperating in a power "pool" within the United States.

Transfer of Facilities and Acquisition of Securities. The Commission undoubtedly will face many difficulties in attempting to bring about interconnection, effective arrangements for interchange of power, and coordinated operation of properties when the electric facilities are *under separate ownership*. However, by virtue of its authority over the transfer of facilities by lease, sale, or merger, as well as over the acquisition of securities of one operating company by another, the Commission may be able indirectly to promote coordination of properties by bringing them under *unified business ownership and control.* Furthermore, in permitting disposal of facilities or acquisition of securities, the Commission may attach whatever conditions it deems necessary in order to foster coordination of power facilities.[37] This authority may prove to be the most effective means the Commission has at hand for encouraging a certain amount of coordination.

There are still two major problems, however, which the Commission must face as a national planning agency. First, with a few minor exceptions, the Commission has no jurisdiction over publicly-owned power properties,[38] yet it cannot overlook the need for coordination of public and private systems. Second, the Commission does not have sole responsibility for devising a national plan for coordination, and must take account of the plans and activities of other governmental agencies.

Coordination of Public and Private Properties. The law states that all governmental bodies and their agencies are exempt from the Commission's jurisdiction.[39] Federal power projects are, however, subject to the Commission's system of accounts "so far as may be practicable";[40] and all operators of pub-

[33] §201 (b).
[34] §202 (e).
[35] *Loc. cit.*
[36] See Counsel's Opinion, p. 7.
[37] §203 (b).
[38] The TVA must conform to the Commission's system of accounts and must secure the Commission's approval of extensions of credit to non-profit organizations for acquisition or improvement of distribution facilities (§§14 (a), 15 (a) of Public No. 17, 73d Cong., as amended by Public No. 412, 74th Cong.). The Bonneville Dam legislation (Public No. 329, 75th Cong.) requires the administrator of that project to conform to the accounting requirements of the Federal Water Power Act, and permits the Federal Power Commission to allocate capital costs to power and navigation and approve wholesale rates.
[39] §201 (f).
[40] §303.

lic projects—federal, state, or local—must render reports to the Commission that will enable it to keep statistics of the industry up to date and to make intelligent recommendations for new legislation.[41] The Tennessee Valley Authority must conform to the Commission's system of accounts.[42] In addition, the Commission has ordered all power companies, both public and private, whether or not otherwise subject to its jurisdiction, to file annual financial and statistical reports, and to present information concerning the production, transmission, and utilization of energy for the last three years.[43] The Commission has also gathered data with respect to a proposed power "pool" in the Tennessee Valley area.[44] But the Commission is completely helpless to compel interconnection and interchange of power between public and private systems.

Indeed, it was to prevent the Commission from obtaining this authority that spokesmen for the utilities insisted on exclusion of public properties from the requirements of the law. Despite the insistence on the part of representatives of the Commission that they did not intend to force private companies to receive and distribute power from federal projects,[45] the utility representatives were suspicious. An excerpt from the report of the Mississippi Valley Committee was introduced into the record of the hearings. The excerpt indicated the Committee's concern with regard to municipal electric plants, which are a "mass of independent, unrelated, and frequently uneconomic generating units." Moreover, the Committee states that the Federal Government "must have outlets for the power developed as an integral part of its conservation program."[46] Whatever part the Commission may play in the future in solving this problem, it has no authority to deal with it adequately under present legislation.

Duplication of Plans. Despite all these difficulties the Commission has gone ahead with its plan for a "rationalized" power map. On June 6, 1936 it issued a tentative division of the United States into 12 power regions, subdivided into 45 "districts." As nearly as can be determined from a rough map published in the *Federal Register*,[47] all of the regions cover more than one state, except in the Florida and Texas areas, where they appear to conform closely to state lines. However, the "districts" in some instances are very small, and tend to follow state boundaries in the populous eastern area. In other areas states are divided into several districts.

At the same time that the Power Commission is engaged in developing a plan for coordination in the industry another federal agency, the Securities and Exchange Commission, is directed by law to determine "the type and size of geographically and economically integrated public-utility systems . . . which can best promote and harmonize the interests of the public, the investor, and the consumer."[48] This concept of an integrated system is to serve the SEC as a guide in regulating acquisitions of securities and utility assets by holding

[41] §311.

[42] See note 38 *supra*.

[43] Order 35, December 6, 1935, cited in *Federal Register*, January 19, 1937, p. 11; FPC, minutes of the 620th meeting, March 23, 1937, p. 10; FPC, Press Release No. 240, August 15, 1937.

[44] FPC, *News Digest*, October 14, 1936. Recently the Commission has made a study of the financial and operating results of distributors of TVA power in several typical communities (FPC, 17th *Annual Report*, p. 21).

[46] House Hearings, p. 532.

[46] *Ibid.*, p. 2129.

[47] June 9, 1936, pp. 656–7.

[48] Title I, §30.

companies and in ordering simplification of utility holding company systems after the first of the year.[49] Although the law defines an integrated system as one "whose utility assets . . . are physically interconnected or capable of physical interconnection,"[50] the SEC is apparently free to disregard the plans proposed by the Power Commission. If the plans of the two commissions are not consistent, the exercise of the Power Commission's scant authority will be all the more ineffective. So far the SEC has been more concerned with bringing about simplification of corporate "structures" than with promoting coordination of properties.[51] It is interesting to note, however, that the Counsel of the SEC has advised that, in regulating acquisitions of property, it is not essential that the property acquired "be interconnected or capable of interconnection with some other property under the control of the company making the acquisition."[52]

Additional complications may arise if the nation should be divided into seven or eight regions for the purpose of creating a national system of power and conservation agencies, as recently proposed in Congress. The Power Act already directs the Power Commission to take account of the "proper utilization and conservation of natural resources" in drawing up its own plan for power regions.[53] One wonders whether, when all these plans are superimposed one upon another, the rationalized power map will not look more like a railroad mortgage map. Apparently the regulatory mechanism will need to be coordinated fully as much as the power industry.

[49] Title I, §9(a)(1); §10(c)(2); §11(b)(1).

[50] Title I, §2(a)(29)(A).

[51] See, e.g., SEC, Press Release No. 712, June 24, 1937.

III. Supplementing State Regulatory Authority

When compared with the problems which the Commission will face in attempting to bring about coordination of power properties, the prospects of more effective regulation in general as a result of federal aid to the states in meeting problems beyond their jurisdiction are very bright. Here again, however, there is a problem, but it not a problem resulting from insufficient jurisdiction in the hands of the Power Commission. Rather it is a problem arising out of the granting of jurisdiction to the Power Commission over certain matters already subject to regulation by the states. There can be little doubt that the Federal Power Act was designed to supplement rather than supersede state regulatory authority. However, there will be certain instances, in the regulation of accounting procedure, depreciation charges, security issues, and mergers, in which state and federal authority will overlap. In these instances reliance must be placed on state and federal cooperation of the highest sort, and a tactful, restrained, and wise administration of the law on the part of the Power Commission is the prerequisite of avoiding conflicts that might unduly burden operating companies, promote extended litigation, or result in encroaching on state authority over matters essentially of local concern.

Rate Regulation. Special pains were taken to prevent any overlapping of jurisdiction with respect to rate regulation. This was because of the fear that, if broad authority to prevent discrimination were conferred on the Power Commission, the result would be, as in railway rate regulation, eventual en-

[52] SEC, Press Release No. 54, December 23, 1935. Opinion of General Counsel, John J. Burns.

[53] §202(a).

croachment on state jurisdiction over local rates.[54] The Commission may prevent discrimination, but only in so far as the discrimination results from the structure of interstate wholesale rates. The law specifically states that the Commission shall have no authority over any other rates.[55]

Likewise, nothing in the law indicates that the Commission's authority will destroy any existing powers of state commissions with respect to interstate wholesale rates themselves. For example, in regulating local rates the states have constitutional authority to consider the "reasonableness" of wholesale rates charged by affiliated companies.[56] But they have no authority to *fix* the interstate rates.[57] This authority is now vested in the federal commission, although it may delegate this power to state "joint boards."

It is unfortunate that, in attempting to prevent federal encroachment on state authority over local rates, more care was not used in wording the law. The declaration of policy contains a statement which can be interpreted to mean that *all of the Commission's regulatory activities* shall extend "only to those matters which are not subject to regulation by the States."[58] Although this provision was undoubtedly intended to apply solely to rate regulation,[59] it invites litigation with respect to the Commission's authority over accounting and many other matters.[60]

Although the Commission has authority to fix interstate wholesale rates only, it can require reports concerning the entire rate structure. Not only may the Commission require filing of reports concerning all rates charged by "public utilities," but it may also require filing of reports on rates and other matters by companies not subject to federal regulation in any other respect.[61] Moreover, in furtherance of efficient state regulation, the Commission may ascertain the actual legitimate cost of electric properties owned by "public utilities" and "other facts which bear on the determination of . . . fair value" for rate-making purposes.[62] In addition, the Commission can determine the cost of generating and distributing power and make this information available to the states.[63]

As far as direct regulation of wholesale rates is concerned, no rule of rate-making is found in the law, aside from the statement that rates must be "just and reasonable" and that there must be no "undue" discrimination.[64] The major attention of the Commission will probably be given to discrimination, since it has no jurisdiction over the general level of the whole rate structure. So far as discrimination is found as between rates that "public utilities" charge industrial consumers and rates that they charge electric utilities reselling the energy to domestic consumers, the Commission will have no authority to remove the

[54] House Hearings, pp. 1619, 1661.

[55] §201(b).

[56] *United Fuel Gas Co. v. Railroad Com.*, 278 U.S. 300 (1929); *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133 (1930); *Western Distributing Co. v. Pub. Serv. Com.*, 285 U.S. 119 (1932).

[57] *Pub. Util. Com. v. Attleboro Steam and Elec. Co.*, 273 U.S. 83 (1927).

[58] §201 (a).

[59] See House Hearings, pp. 402–3; also, Hearings before the Senate Committee on Interstate Commerce on S. 1725 (1935), pp. 249–50.

[60] The ambiguity is enhanced by the fact that the next subsection specifically denies in unequivocal language that the Commission has any authority over local rates (§201 (b)). The implication is that the preceding subsection has a broader meaning.

[61] §311.

[62] §208 (a).

[63] §206 (b); §307 (a). To facilitate getting this information the uniform system of accounts that the Commission has adopted requires operating expenses to be "functionalized" as much as possible so as to avoid "arbitrary allocations of charges" between generation, transmission, and distribution (FPC, Press Release No. 92, July 1, 1936, p. 2).

[64] §205 (a), (b).

discrimination by changing the industrial rate.[65] Place discrimination will probably be the most important issue, and it is conceivable that the Commission will in some cases order companies to raise their interstate rates rather than lower them.[66] States from which power is exported are completely helpless to require that the energy be sold at rates which are sufficiently remunerative to protect the company's ability to render adequate service to the states' own citizens.[67]

The minutes of the Commission's meetings reveal much discussion concerning the wholesale rates on file, but at this writing no regulatory action has been taken. Indications are that the policy of the Commission in the future will be to request the views of all parties directly affected by the rates at the time they are filed, and that the burden of justifying any changes in the rates on file will be placed upon the company requesting the changes.[68] In addition to filing their rates, companies are now rendering monthly reports concerning the amount of energy transmitted, interchanged, received, or sold under each rate, and the amount paid or received for the energy.[69]

Security Regulation. Another matter, in addition to rate regulation, that is left largely to the states is control of security issues. The Power Commission has no jurisdiction over this matter if the company is "organized and operating" in a state under the laws of which its security issues are regulated by a state commission.[70] However, there is a possibility of overlapping federal and state jurisdiction in certain cases. Some states regulate the security issues of foreign corporations on the ground that they are doing business in the state.[71] If the state in which such companies are incorporated does not regulate their security issues, federal jurisdiction would duplicate that of the states in which the companies are doing business. Furthermore, regardless of the exercise of state jurisdiction, the Power Commission will be able to exert some control over security issues as a result of its authority over the transfer of facilities by means of merger or consolidation.[72] This overlapping of authority contributes to the necessity of close federal and state cooperation in regulating the industry.

Provided such cooperation is feasible, there are many ways in which the Power Commission can be of assistance to state commissions even when they possess jurisdiction over security issues. Some states regulate all security issues of companies incorporated therein. When the securities constitute liens on properties located outside the state and neighboring states make no effort to regulate security issues, the task of regulation is extremely burdensome. The Power Commission's uniform system of accounts and its valuations of properties should prove to be very useful in such cases.

[65] This is because the law defines a wholesale rate as a charge for power that is sold to any person for resale to the public (§201 (a), (d)). See also the testimony of Commissioner Seavey in House Hearings, p. 424. Utility interests were fearful that the Power Commission might force companies to raise industrial rates in order to benefit domestic consumers (House Hearings, p. 228).

[66] The first formal complaint concerning an interstate rate that the Commission received charged that the rate was too low. A Pennsylvania state senator claimed that the Philadelphia Electric Company was selling power to Delaware Power and Light Company at unduly preferential rates, "confiscatory of the property" of the Pennsylvania company (FPC, Press Release No. 230, July 24, 1937).

[67] State regulation of exports of energy generated by water power is an exception that has already been noted (*supra*, note 33).

[68] Minutes of the 628th meeting, April 27, 1937; 633d meeting, May 18, 1937.

[69] Rules and Regulations, p. 97.

[70] §204 (f).

[71] See Elsbree, H. L., *Interstate Transmission of Electric Power* (Cambridge: Harvard University Press, 1931), pp. 131–2, 136, 141, 144.

[72] §203.

Accounting Regulation. The most notable example of duplicate state and federal jurisdiction occurs in the case of accounting regulation. The Commission's uniform system of accounts applies to all generation, transmission, and distribution properties of companies subject to its jurisdiction. Since companies are subject without qualification to both federal and state requirements,[73] state and federal cooperation is extremely important for avoiding conflicts. Federal jurisdiction is exclusive only in the case of depreciation requirements. Companies are forbidden to show on their books any depreciation expense or depreciation reserve other than that prescribed by the Power Commission.[74] The only exception is that the state commissions may ignore the federal depreciation requirements when regulating local rates.[75]

Despite the possibility of conflicts, the state and federal agencies have thus far cooperated in a way that promises to bring about national uniformity in accounting and reporting which will be of great value in gathering statistics and in regulating the industry. In 1936 the Commission adopted a uniform system of accounts to become effective January 1, 1937.[76] The National Association of Railroad and Utilities Commissioners, in the same year, recommended that the states adopt a similar system, and shortly thereafter the Power Commission amended its requirements in order to avoid conflicts that might arise out of previous slight differences between the two systems.[77] The Commission recently reported that at least 20 states have already adopted the system.[78] In addition, the Commission, collaborating with the National Association, has worked out uniform requirements for annual financial and statistical reports.[79]

One of the most important provisions of the uniform system of accounts is the requirement that companies must segregate so-called "write-ups" from "original cost" of their properties.[80] The original cost at the time the facilities were first devoted to public service must be ascertained or estimated for inclusion in the regular property accounts, and the difference between this amount and the cost to the reporting company is to be kept in "adjustment" accounts. The Commission will then require depreciation on the basis of original cost and "amortization" of the "write-ups."[81] Although the Supreme Court has upheld a similar requirement imposed on telephone companies by the Federal Communications Commission, it is significant that Mr. Justice Cardozo based his decision in part on the fact that there was no evidence of any intent to

[73] §301.

[74] §302 (a). In this connection it is interesting to note that the Commission's uniform system of accounts does not indicate the method that must be used in computing annual depreciation expense.

[75] *Loc. cit.*

[76] Order No. 42, June 16, 1936.

[77] Order No. 43, December 31, 1936. See *Federal Register*, January 16, 1937, p. 103.

[78] FPC, Press Release No. 240, August 15, 1937.

[79] *Loc. cit.*

[80] The law specifically gives the Commission authority to require reports of original cost (§208 (b)).

[81] As indicative of the care that will be exercised in determining original cost the Commission in its 631st meeting, May 11, 1937, ordered that on or before January 1, 1939, when the segregation of write-ups must be made, companies must submit elaborate supporting data. This information will include an outline of the company's origin and development; a description of each consolidation, merger, or acquisition of facilities; and, with respect to each acquisition by the reporting company or any of its predecessors, the original cost of the property, the cost to the company acquiring it, and the amount entered on the books at the date of acquisition. The "increments" of value in the "adjustment" accounts must be classified as to nature. For example, "going value" must be segregated from other elements of value. Full disclosure must be made of the facts employed and the methods used to estimate original cost. Companies are invited to suggest plans for amortizing the write-ups.

require amortization of "write-ups" regardless of whether they represented a "true increment of value" or a "fictitious or paper increment."[82] When the Commission comes to require amortization it will face a grave theoretical as well as legal problem in attempting to distinguish between these two types of "increment."

However, the mere fact that the companies are required to show original cost on their books may be of value in contesting claims for an inflated rate-base. According to the Court's doctrine of "fair value," original cost as well as reproduction cost is a relevant consideration. Furthermore, accounting control may obviate the necessity of making extensive physical valuations of properties to establish a rate-base. The industry is sufficiently young so that the difficulties of determining original cost through accounting records are probably not as insuperable as they were in the railway industry, and as time passes and accounts continue to be closely supervised the estimates of original cost will be replaced by more accurate data.

Cooperative Procedure. In view of the fact that state and federal jurisdictions will overlap in a number of cases, the provisions for cooperative procedure are significant as a means of avoiding conflicts. The Power Commission has authority to hold joint hearings or conferences with any state commission concerning matters of common interest.[83] Furthermore, the provision that allows the Commission to refer any matter subject to its jurisdiction to joint state boards[84] will enable decentralization of supervision with respect to matters in which the Federal Government may have an interest but which are essentially of local concern. In order to keep close contact with state commissions, the Power Commission now has regional offices in New York City, Atlanta, Chicago, Denver, and San Francisco.

It should be noted that joint state boards, appointed by the Commission from a panel nominated by the state commissions or governors, will act as agents of the Federal Government and exercise federal authority. Furthermore, joint boards may be used not only to settle questions that affect more than one state, but as a means of bestowing authority upon a single state commission to regulate intrastate matters, when state legislation has failed to grant adequate authority. For example, the Public Service Commission of Vermont nominated itself as a "joint board" and was given authority by the Power Commission to regulate a merger.[85] Even the State of Delaware, which has no commission, could assert jurisdiction over certain matters upon invitation of the Power Commission and the cooperation of the Governor.

In view of the extensive provisions for cooperation between the federal and the state commissions it is curious that the law contains no specific provision for cooperative procedure between the Power Commission and the Securities Commission. Such cooperation would appear to be desirable in view of the fact that Congress saw fit to divide federal jurisdiction over a single industry between two commissions. The SEC has jurisdiction over holding companies, "subsidiaries," and "affiliates." In so far as these companies may also operate interstate facilities, they might also be subject to the Power Commission's jurisdiction. Conflicts of jurisdiction will probably not be frequent or of great importance because of the authority of the SEC to

[82] *Amer. Tel. & Tel. Co. v. United States*, 81 Adv. Ops. 116 (1936).

[83] §209.

[84] *Loc. cit.*

[85] FPC, Press Release No. 107, July 30, 1936.

exempt certain operating companies from regulation. The lawmakers apparently thought the problem was solved by insertion of a provision in the law which restricts the Power Commission's jurisdiction in case of conflict. The law declares that when a company is subject both to a requirement of the Holding Company Act and a requirement of the Power Act, or to an order of both federal commissions, "with respect to the same subject matter," the Power Commission's jurisdiction shall be void.[86]

One case has already occurred, however, which indicates that one federal commission may duplicate the work of the other with respect to the same subject matter when their orders are not directed to the same company. The case concerned the sale of facilities. Both companies were "public utilities" as well as "subsidiaries" of a registered holding company. One company had to get the Power Commission's permission to *sell* the facilities, and the other company had to get the Securities Commission's permission to *buy* them. As a result, duplicate hearings were held by the two commissions on the same subject matter.[87]

Future of State and Federal Cooperation. Much more serious, however, than this duplication of activity on the part of the two federal commissions is the recent tendency of the Power Commission to duplicate activities of state commissions, particularly with respect to merger cases. Effective federal and state cooperation, so indispensable for successful administration of the Power Act, cannot be attained by legislative fiat. The success of cooperation between states and nation depends on a mental attitude—the willingness to cooperate. The Power Commission's gravest obligation to the public is to foster this spirit of cooperation on the part of state commissioners by deference to their views and by the greatest possible resort to joint hearings when federal and state jurisdictions overlap. There is no surer way to destroy this spirit than by an undue emphasis upon "federal supremacy" and an indiscriminate use of the Commission's "veto power." Yet the Power Commission, unfortunately, may be making this very mistake by duplicating the activities of state commissions with respect to mergers.

Suppose, for example, that a state commission, after a long and careful investigation, approves an application of a public utility to merge with some other corporations. Subsequent to the state commission's approval but prior to consummation of the merger the Power Commission, as frequently happens, asserts jurisdiction over the merger, and indicates its intention to conduct the same extensive and painstaking investigation that has already been made by the state commission. The state commissioners can hardly interpret this action otherwise than as a slap in the face. Furthermore, the state commissioners do not sit with the federal commissioners as their equals in a true cooperative undertaking, but are placed in the position of attempting to justify before a federal tribunal the action they have already taken in the assertion of their local jurisdiction.

The psychological effect on the state commissioners would, of course, be intensified if the federal commission should disapprove the merger, or should approve it subject to certain conditions such as the writing down of property values. Suppose, in addition, as is sometimes the case, that the only basis for

[86] §318.

[87] FPC, Minutes of the 602d meeting, December 31, 1936, pp. 3–4.

the Power Commission's authority to attach such conditions is the fact that the company has a few interchange contracts for wholesaling energy in interstate commerce which is essentially "dump" or off-peak power. The rates charged for this power are related almost solely to "out-of-pocket" costs, and valuation of the company's properties, other than its transmission facilities, has almost no bearing on the fairness of the wholesale rates. How long would it be, in such a case, before the Commission's jurisdiction would be challenged in the courts on the ground that the preamble of the Power Act declares that federal regulation shall extend "only to those matters which are not subject to regulation by the States?"[88] The future success of state and federal cooperation depends on whether the Power Commission can avoid such litigation and can nurture a genuine spirit of cooperation on the part of state commissioners.

IV. Conclusions

Until the Federal Power Commission has had much more experience in administering the Power Act and until the law has been subjected to judicial construction it is impossible to say with confidence what the total effect upon the efficiency of electric utility regulation will be. Much depends upon whether the Power Commission administers the law with wisdom and restraint; and the language in which the law's provisions are couched is sufficiently involved and at times ambiguous to leave much room for what is popularly called "judicial legislation." However, the scope of regulatory jurisdiction, according to the Counsel's interpretation of the law, is sufficiently broad to warrant close attention to the activities of a commission that has hitherto been concerned almost solely with licensing of water-power projects.

It is probable that the least effective of the Commission's activities under the law will be those dealing with coordination and interconnection of properties. Indeed, the law as now drawn may not only discourage further voluntary coordination in the industry but also induce some companies to cut existing interstate connections in order to avoid federal regulation. The Commission will probably seek amendments granting increased authority to deal with the problem of coordination. What amendments are desirable is a question beyond the scope of this paper.

The most important provisions of the law are those that are designed to supplement and implement the regulatory jurisdiction of the states. The two provisions of the law which will probably be of greatest value to the state commissions in raising the level of efficiency in regulating intrastate matters are that the Power Commission can collect information for the states and can lend its experts for use by state commissions. Some commissions have inadequate staffs and most of them cannot pay salaries adequate to attract and retain outstanding experts and specialists in the various phases of regulation. Some use has already been made of the privilege of borrowing federal experts. For example, the New Hampshire Public Service Commission, in connection with a recent study of depreciation methods, obtained the services of the Chief of the Power Commission's Bureau of Finance and Accounts and the Chief Engineer of the Securities Commission, two men who are preeminent in the field of depreciation.

The other provisions of the law, which are designed to destroy the "twilight zone" of unregulated activities and to

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[88] §201 (a). See note 57 *supra*.

bring about national uniformity in certain matters such as accounting classifications, are certainly desirable if they do not result in virtual extinction of a large share of that state control which it was the intention of the Federal Government to strengthen. The advantages of decentralized regulation of an industry, the major aspects of which are still essentially of local concern, are sufficient reason for opposing undue encroachment on state authority, without resort to the time-worn emotional appeal of states' rights.

The law contains ample restrictions on the Power Commission to prevent encroachment on state authority over local rates. However, federal and state jurisdiction will overlap in a number of important cases, such as in the regulation of accounting, depreciation charges, mergers, and security issues. Indeed, the subject matter of those phases of the industry which are essentially of national concern may be so interrelated with the subject matter of the phases which are of local concern that it may not be feasible to mark off mutually exclusive fields of federal and state jurisdiction. In that case, reliance must be placed upon intelligent state and federal cooperation.

That state and federal cooperation can achieve substantial results is indicated by the encouraging trend toward national uniformity of accounts and reports. Cooperation is more of a problem of administration than of law-making. The future success of cooperative procedure depends upon the manner in which the Power Commission administers the law as well as upon the willingness of state commissioners to cooperate.

Successful administration of the law will not be easy. Whenever federal agencies are created to assume regulatory functions they tend to take over more and more of the activities of the states. The federal agency is likely to feel that it has been entrusted with the primary responsibility to the public for whatever decisions are rendered, and little weight is given to the views of state commissioners. The result is that the state officials are offended, and the spirit of cooperation, without which cooperative procedure cannot succeed, is destroyed. The primary obligation of the Power Commission to the public is to preserve this spirit of cooperation in full vigor.

The Agricultural Adjustment Act of 1938: A Symposium

I. The Act in Brief

By LLOYD S. TENNY*

THE new agricultural law[1] is long and involved. It is not an easy matter to sketch briefly the important provisions of this far-reaching act of Congress. Perhaps no better idea can be obtained of the aim of this legislation than to quote in full the declaration of policy given at the outset of the new bill:

"It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices."

From this statement it is clear that the new law continues the policy of soil conservation. To accomplish this aim some additional administrative details are provided—especially the development of local and state committees. Local committees are provided along county or smaller subdivision lines. Farmers cooperating in the government program are to elect one local committee and also one representative of the local area to serve on a county committee. The county committee elected shall consist of three farmers with a further provision that the County Agricultural Agent may be secretary but without any power to vote. In the selection of the state committee, the Secretary of Agriculture has absolute power to make the appointment.

Title II of the Act provides especially for establishment by the Secretary of four regional research laboratories to develop new uses and to extend the markets for farm products. In this section a provision is also added authorizing the Department of Commerce to use $1,000,000 annually for promoting the sale of farm commodities, chiefly, no doubt, in the export field.

In Title III are found the most important and the newer features of the Act, such as the normal granary idea of Secretary Wallace. Here will be found the provisions for marketing commodities, including the method of conducting a referendum of farmers to determine whether the compulsory marketing program shall be made effective. The commodities affected directly in these important matters are wheat, corn, tobacco, cotton, and rice. Let us illustrate briefly with one commodity (corn), a few of the high points of stabilization and control provided for in the law.

The measure provides that corn is a basic source of food and moves almost wholly in interstate and foreign com-

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[1] The Agricultural Adjustment Act of 1938, Public No. 430, 75th Congress.

merce. Abnormally heavy and abnormally deficient supplies of corn actively and directly affect commerce in corn, live stock, and their products. The public interest requires that these burdens on commerce be removed by the exercise of federal power.

To accomplish this end, the Secretary shall first of all determine, as nearly as possible, the number of acres of corn needed in the commercial corn-producing area and shall proclaim such acreage allotment by February 1 of each year. This total acreage shall be broken down by state, then by county, and then finally by individual farms, this breaking-down process being based on the production statistics of the previous years. There appears to be no direct and immediate penalty on a farmer who plants more acreage than that allotted to him. If weather conditions or other adverse factors should reduce the probable supply of corn for the year below the amount estimated to meet the requirements, nothing happens.

If, however, irrespective of acreage planted, the crop-estimating reports show a probable yield in excess of our needs, then a marketing agreement to control the movement of corn in commerce and the movement for feeding purposes shall be submitted to the farmers for a vote on putting the marketing under definite control providing 1/3 or more of the farmers do not vote in opposition to this control feature. After the marketing agreement has been voted favorably by 2/3 or more of the producers, the restrictions are placed upon all. The amount of corn sold or fed on any individual farm is figured on the basis of acreage allotted to it. Surpluses of corn on that farm must be stored. A penalty is provided on corn sold or used in excess of the allotment for the individual place and these penalties are set forth in Section 325 (a), the first sentence of which reads as follows:

"Any farmer who, while any farm marketing quota is in effect for his farm with respect to any crop of corn, markets corn produced on the farm in an amount which is in excess of the aggregate of the farm marketing quotas for the farm in effect at such time, shall be subject to a penalty of 15¢ per bushel of the excess so marketed."

This description gives in very broad terms the requirements under the law for corn. In general, the other basic crops are handled in a similar manner.

In conclusion and for any adequate understanding of the measure, attention should be called to a lengthy set of definitions given at the beginning of Title III of the Act. Anything like a comprehensive idea of the Act cannot be had without a thorough understanding of these definitions.

II. Opinions on the Act

AN OPINION on the merits of the new farm relief measure must be tentative because of the administrative changes, or modifications, which are being made, and to be made. The Act as it stands is voluminous, complex, and in places—contrary to statements coming from Washington—hard to interpret. However, the main purposes are obvious. It is designed to raise farmers' prices, first, through control of output supplemented by benefit payments; secondly, through control of the amounts marketed, the latter means being facilitated by commodity loans on the surplus. As a background of this more immediate procedure are retained the main features of the Soil Conservation Act of 1936.

If not the first, this is at least one, of

the few bills which carry their own reasons and arguments, such as might be contained in a lawyer's brief, used in defense before the courts. For instance, one would have to hunt in the statute books for other such attempts at a statement of economic doctrine and facts such as the following: "Violent fluctuatuations from year to year in the available supply of corn disrupt the balance between the supply of livestock and livestock products . . . and the supply of corn available for feeding." This is followed by a statement that farmers increase livestock production in times when corn prices are low, thus endangering financial stability, overloading processing facilities, causing high prices to consumers, financial distress to certain groups, with return to the same dreary round. One is almost led to believe that he is reading a treatise on crises and cycles. The federal power is invoked in the interest of relief from the burdens of foreign commerce! Many of us have felt for some years that the main burden on foreign commerce was the toll collector, not the excess of corn or pork.

The measure is, in general, a heroic attempt to bring agriculture under the control of governmental force, administered largely through local committees, with a semblance of final power in the hands of the interested parties—possibly more than a semblance. It has the appearance of a program looking toward nationalism, with but faint hope in foreign trade. The "ever-normal granary," innocent enough in its present aspects, is wholly inadequate to bring about signal results. What is more, we, of all people, are more in need of a restoration of normal trade than of any particular holdover of foods and feeds beyond such as we have usually had, or are likely to have.

What we need, a more fundamental need than agricultural limitation of output, is some means of putting labor in motion within our industrial plants. The greatest boon to agriculture is money in the hands of the urban buyers, at home and abroad. On this we are manifesting prolonged weakness.

B. H. HIBBARD
Professor of Agricultural Economics, University of Wisconsin.

THE following remarks are intended to direct attention to some fundamentals of current agricultural policy. Does the new act represent a shift from scarcity to "balanced abundance"? The intent to build up supplies supports an affirmative answer. However, the major objective is still that of price enhancement for which supply restriction is necessary. The "ever-normal" granary is not suited to all farm products and so is not a blanket protection against shortage. Its net effect depends not only upon how much it raises prices when supplies are stored but also upon how much prices are lowered subsequently, as well as upon costs of storage. The price-pegging loans authorized under certain circumstances may take on some features of the Farm Board experiment. If funds are provided for parity payments, the program will move definitely toward price fixing. Careful consideration ought to be given to the probable consequences of these measures before we go very far along this line.

Soil conservation and production adjustment are not Siamese twins. Conservation should be a permanent program rather than serve as a guise for benefit payments. It should be adapted to the needs of each parcel of land rather than to depend upon the supply situation of different crops. The division of responsibility for conservation between the pub-

lic and the farmers should be determined. Public funds expended for conservation should yield commensurate returns to the public in terms of conservation results.

The limitations of the price parity concept need to be recognized. There is no permanent fixed relationship between prices such as this idea contemplates. If agriculture is faced with recurring surpluses, it evidently is overexpanded and, if so, the only permanent remedy is curtailment of the industry instead of reduction of output of existing farms. Consideration needs to be given to the effect of a subsidy upon the attainment of this end.

O. B. JESNESS
Professor of Agricultural Economics, University of Minnesota.

THE voluminous proportions of this new legislation suggest a variety of comments in addition to those already presented. However, two points in particular deserve mention here to round out the consideration of this important subject.

One of these is the matter of competition of farmer with farmer which this legislation seeks to reduce—while at the same time such competition is being stimulated by the Farm Security Administration program. Competition among farmers has long been a characteristic of the agricultural industry. So long as this condition prevails uncontrolled, balanced production and soil conservation measures will be difficult to achieve. Particularly is this true since this type of competition operates on a short-time point of view. The object is maximum production for the immediate market; obviously this type of procedure is inimical to a conservation program and a balanced agriculture.

In contrast to this point of view the new agricultural legislation attempts to establish a long-range program, one which will protect the productive capacities of agriculture, raise the standards of the farming industry in the long run, and thus put it upon a more stable basis. In the light of this objective, then, the possibilities inherent in the use of the bonus device to take the emphasis off of competition and put it on conservation warrant serious consideration. But the effort to reduce competition of farmer with farmer will require something more than a bonus for limiting production on the part of individual farmers. It will require some means of directing surplus farm population into other occupations.

The other important consideration is the matter of long-time forecasting—of weather, of soil moisture, etc.—which is essential to realization of an "ever-normal granary" program. The best possible information must be available concerning probable variations in yields for several years in the future if we are to achieve an ever-normal granary. Considerable strides have already been made in the direction of such forecasting but much more remains still to be done. Forecasting of this type presents a challenge to the agricultural scientists of this country and the world.

HELEN C. MONCHOW
Of the Journal Staff.

THE Agricultural Adjustment Act of 1938 puts into the hands of the farmer a mechanism which, if properly used, will enable him to control surpluses of basic crops and to stabilize prices therefor. Rigid production control is provided for cotton and tobacco, in addition to marketing quotas and loans under certain conditions. With wheat and corn, the emphasis is on commodity loans and marketing quotas to support market prices and to control

movement to market during times of heavy surpluses. If a high percentage of farmers comply with the program, it follows that they can really stabilize prices of the commodities involved.

The objective of the law is abundant production, the maintenance of adequate reserve supplies, and the stabilization of prices at levels approaching parity. Special inducements are offered the small producer for cooperation, and payments to big producers are definitely limited. The consumer is protected against scarcity by provisions for reserve supplies much larger than we customarily carry.

EDWARD A. O'NEAL
President, American Farm Bureau Federation.

THE recent farm bill contains many admirable features. It continues the Soil Conservation Act. It strengthens the work already undertaken to conserve the nation's soil resources and to balance agricultural production. The proposals to develop crop insurance, strengthen commodity cooperatives, continue the Surplus Commodity Corporation, improve marketing agreements, and provide ample crop loans and storage facilities are along the lines of sound farm progress. The proposals to balance production with consumption and to provide parity of farm income are equally admirable if continued under farm guidance and control.

The weakness of this legislation grows out of its complications and the possibility of continued regulation and control from Washington. It makes no difference who sits in the President's chair, or who is Secretary of Agriculture over the long run of the years—the farmer will be better off managing his own affairs, than having them directed from Washington, even though our leaders may be the wisest and most friendly to agriculture that the nation has ever known. It is unfortunate that the compulsory features could not be stripped from the bill and placed in simpler and more understandable language. The proposal is now a law and entitled to a fair trial. Farmers, however, should be alert to provide amendments when needed.

L. J. TABER
Master, The National Grange.

Coordination of Transportation by Regulation

By JAMES C. NELSON*

EDITORIAL NOTE: *Readers are referred to the Public Utilities Department in this issue of the Journal at pp. 227–30 for Mr. Nelson's comments on the report of the special committee on relief of the railroads, headed by Chairman Splawn of the I.C.C., which appeared after this article was written.*

DEVELOPMENTS in the field of transport since the World War have been striking and productive of problems of serious national concern. During the past six years new transportation conditions have influenced responsible public opinion in this country to reconsider our national transport policies.[1] Numerous suggestions for solving railroad and other transport problems have been thrown into the hopper of public discussion and argument. Beyond doubt the most important of these are the recommendations made by Mr. Joseph B. Eastman when he held the office of Federal Coordinator of Transportation. Since these recommendations bear the signature of this universally respected leader in transport circles, are official, and are based upon a series of the most extensive factual studies yet contributed to American literature on transportation problems, they and the factual studies upon which they are based merit careful analysis and critical discussion. The recent catastrophic decline in railroad net operating income and the attendant wave of bankruptcies signal more trouble ahead for these carriers.[2] This unexpected development has cleared up the blurred impression created by the somewhat improved financial positions of many railroads during 1936 and the early part of 1937, with the result that the railroad problems which many regarded as definitely on the road to satisfactory solution are again commanding serious attention. It has stimulated a renewed interest in the Coordinator's recommendation that an effective national transport policy should provide coordinated regulation of all competing agencies of transportation.

The Emergency Railroad Transportation Act of 1933

Concern over the economic and financial position of the railroads became widespread as a result of the impact of the depression of the early thirties upon the railroads, the carrier system that moves nearly 3/4 of our freight traffic, although a much smaller proportion of our passenger traffic.[3] The precipitous

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[1] For a discussion of the policies of the Federal Government in regard to promotion and regulation of highway, rail, air, and water transportation in the United States, see Report No. 12 to the Select Committee to Investigate the Executive Agencies of the Government, *Report on the Government Activities in the Field of Transportation*, prepared by the Brookings Institution, 75th Cong., 1st sess., 1937.

[2] According to *Railroad Data*, February 11, 1938, the net railway operating income of Class I railroads for December, 1937, amounted to $25,971,525, as compared with $70,505,535 in December, 1936, or a drop of 63.6%. Gross operating revenues for December, 1937, dropped 19.3% as compared with the same period in 1936. While gross revenues for 1937 were 2.8% higher than in 1936, the net railway operating income declined 11.5% in 1937 as compared with 1936. On December 31, 1937 the Minneapolis, St. Paul & S. Ste. Marie Ry. Co., operating 4,297 miles of road, and on January 18, 1938 the Erie Railroad Company, operating 2,284 miles of road, applied for trusteeship under Section 77 of the Federal Bankruptcy Act (*The Guaranty Survey*, Vol. XVII, No. 10, January 31, 1938, p. 1).

[3] As measured in ton-miles and passenger-miles. For a recent estimate of the distribution of freight and passenger traffic in the United States, see the National Resources Committee's report, "Technological Trends and National Policy," June, 1937, §III, p. 177.

45.9% drop in ton-miles of revenue-freight and the somewhat more pronounced drop of 46.3% in revenue passenger-miles carried by Class I railroads which occurred between 1928 and 1932 were doubtless the principal factors in producing the generally unprofitable operations which in the depth of the depression threatened many roads with bankruptcy.[4] The acuteness of the situation resulting from reduced traffic volume was intensified by (1) a tendency (long operating as an underlying factor) for motor carriers and vehicles to divert traffic from the railroads and (2) a declining rate level because of the increased severity of interagency competition for traffic and because of slackening demand.[5] While the lending to various railroads of hundreds of millions of dollars in 1932 and succeeding years by the Reconstruction Finance Corporation provided a temporary bridge over the chasm of bankruptcy which confronted many rail carriers during the great depression,[6] many groups advocated a thorough reconsideration of our national transport policies as an essential first step toward finding a solution to the railroad problem and maintaining an adequate and efficient transportation system.[7] The relatively poor showing of the railroads during the recent recovery period and the subsequent recession have supported the soundness of this conclusion.

The response of Congress to the widespread public concern regarding the future of the American railroads was enactment of the Emergency Railroad Transportation Act of 1933, creating the office of Federal Coordinator of Transportation.[8] Mr. Joseph B. Eastman, who was appointed by President Roosevelt to assume the arduous and responsible functions of this office, interpreted the Act as giving him two principal duties.[9] One was to look for opportunities of eliminating waste and unnecessary expense in railroad operation. The other was to consider ways and means of improving transportation conditions throughout the country, including ability of the carriers to improve their properties, furnish service, and charge rates which would promote commerce and industry, and to recommend to the President and Congress legislation which would further these ends in the public interest. The latter duty was interpreted as not confined to the railroads. During the three years that Mr. Eastman held this office many exhaustive investigations of costs and methods of handling railroad traffic and of the nature and implications of

[4] In 1928 Class I railroads carried 432,915,184,526 revenue ton-miles of freight and 31,601,341,798 passenger-miles of passenger traffic as compared with 233,977,008,859 ton-miles and 16,971,044,205 passenger-miles in 1932 (*A Yearbook of Railroad Information*, 1937 ed., pp. 24, 28).

[5] For Class I railroads as a whole the average revenue per ton-mile dropped from 1.081 cents in 1928 to 0.999 cents in 1933 and 0.974 cents in 1936; average revenue per passenger-mile dropped from 2.850 cents in 1928 to 2.013 cents in 1933 and 1.838 cents in 1936 (*Ibid.*, p. 34).

[6] Between February 2, 1932 and September 30, 1937 the RFC lent to railroads $537,126,239.11, of which $180,847,235.93 had been repaid by the latter date. On this date a balance of $356,279,003.18 of railroad loans were still outstanding (*Report of the Reconstruction Finance Corporation for the Third Quarter, 1937*, p. 8). On June 30, 1937, 94 steam railways of all classes with an operated mileage of 70,817, or 28% of the total miles operated, were in reorganization or receivership (51st *Annual Report*, I.C.C., p. 5). Since then the Soo Line and the Erie Railroad have joined the ranks of these railways, swelling the miles operated to 77,398, or 32% of the total.

[7] See *Report of the National Transportation Committee* (New York, February 13, 1933) and the factual studies by the Brookings Institution upon which the recommendations of the National Transportation Committee are in part based, published in *The American Transportation Problem* (Washington: Brookings Institution, 1933).

[8] 48 Stat. 211, c. 91, June 16, 1933. This Act expired on June 16, 1936.

[9] See address of the Federal Coordinator of Transportation before the American Trucking Associations, Inc., Chicago, October 22, 1934, *Proceedings*, pp. 11–6.

competitive relationships among various transport agencies were undertaken and completed. The recommendations made by the Coordinator to the President and Congress with regard to legislation needed for shaping a public transport policy better designed to provide a more efficient transportation system were based upon these studies.[10] This discussion will be restricted to the legislative recommendations of the Coordinator.[11]

Legislative Proposals of the Coordinator

The more significant legislative proposals of the Coordinator would extend regulation to the leading competitors of the railroads, including interstate motor and water carriers and wharfingers, and would reorganize the I. C. C. Reorganization of the I. C. C. was to be provided for only if Congress acted favorably upon the motor and water carrier bills. Of this group of important recommendations only the bill providing for regulation of interstate motor carriers has been enacted to date. The Motor Carrier Act of 1935 became law on August 9, 1935 and is now in its third year of administration.[12] Emphasis in this discussion will be centered chiefly upon issues raised by this proposed legislation and the Motor Carrier Act of 1935.

A second group of the Coordinator's legislative proposals relates mainly to internal problems subject to managerial control of the railroads and to improvement in railroad regulation in light of present-day needs. To strengthen the financial position of the railroads a bill was proposed to amend Section 77 of the Bankruptcy Act in such manner as to expedite railroad reorganizations by curbing the power of recalcitrant minority interests to obstruct plans favored by the larger classes of creditors or shareholders. To reduce the burden upon labor, a bill was proposed to provide for payment of dismissal compensation to railroad employees displaced by coordination projects carried out by the rail carriers. For the purpose of improving existing regulation of railroads, bills were recommended: (1) to enable the Commission to prescribe minimum as well as maximum joint rail-water rates, and to establish through-railroad routes where deemed necessary in the public interest regardless of the "short-hauling" of any carrier; (2) to include ports and gateways in the protection of Section 3 of the Interstate Commerce Act against undue preference and prejudice; (3) to restore the Fourth Section of the Interstate Commerce Act to the form which it had prior to the legislation of 1920; and (4) to shorten the statutory periods of limitation with respect to reparation claims to one year in the case of overcharges and undercharges and to 90 days in the case of all other claims. Of this group of proposals only the bill amending Section 77 of the Bankruptcy Act and the bill to include ports and gateways in the protection of Section 3 of the Interstate Commerce Act have

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[10] These recommendations and analyses of the conditions upon which they are based have been published in the following reports: *Regulation of Transport Agencies*, Senate Doc. No. 152, 73d Cong., 2d sess.; *Report of the Federal Coordinator of Transportation*, 1934, House Doc. No. 89, 74th Cong., 1st sess.; and *Report of the Federal Coordinator of Transportation*, 1935, House Doc. No. 394, 74th Cong., 2d sess.

[11] For a recent discussion of Mr. Eastman's suggestions for eliminating wastes in railroad operation, see Wm. J. Cunningham, "The Federal Coordinator's Contribution to Railroad Coordination," 15 *Harvard Business Review* 265–74 (1937).

[12] Public Act No. 255 (74th Cong., 1st sess.), cited as Part II of the Act to Regulate Commerce. For an extended discussion of the history of this Act, the economic principles upon which it is based, and the economic implications of the regulation provided, see the writer's article, "The Motor Carrier Act of 1935," 44 *Journal of Political Economy* 464–504 (August, 1936).

been enacted.[13] With the exception of the proposed relaxation of limitations upon the Commission in granting the railroads fourth-section relief, these proposed amendments to Part I of the Interstate Commerce Act are of relatively minor significance in terms of shaping our national transport policy, and will not be discussed here.

The important legislative recommendations of the Coordinator are concerned with problems growing out of the competitive situation between the railroads and competing agencies of transport, particularly motor and water carriers. Mr. Eastman cites the estimated outlay for new transportation facilities of approximately 25 billions of dollars in the United States between 1920 and 1932 and the incomplete utilization of our transport facilities during the depression in support of his conclusion that competition among competing agencies of transport is cutthroat, with the result that rate levels had been depressed to the point where the transportation business had become generally unprofitable. Believing that rail carriers had been handicapped in the ensuing struggle for traffic because of lack of sufficient regulation of motor and water carriers, the Coordinator concluded that two alternatives with regard to public policy could be considered: (1) relaxation of railroad regulation to permit rail carriers unrestrained freedom to compete with other agencies; or (2) extension of regulation (or a greater degree of regulation) to the important agencies competing with the railroads. Reference to the legislation actually recommended indicates that Mr. Eastman rejected throwing the field open to competition unlimited by governmental control of rates and supply of service and presents a program, which, if eventually enacted by Congress, will extend to a reorganized I. C. C. authority to control rates and service of each important transport agency. The basic theme in the Coordinator's legislative proposals is that economic coordination of our various transport agencies can be achieved only by a controlled competition so designed by governmental authority that each agency will handle only that traffic for which it is especially adapted.

Meaning of Coordination by Regulation

In any discussion of the Coordinator's legislative proposals a number of questions come to mind. In the first place, "coordination" may be variously interpreted. What is the meaning attached to this term by Mr. Eastman when discussing public transport policy? Second, is his theory that economic coordination of our transport facilities requires regulation of all competing forms of transportation valid? The agencies competing with the railroads and the shippers are interested in knowing whether regulation for coordination would favor the railroads by impeding economic development of motor and water carriers. Third, once it is decided that coordination through regulation is a desirable policy, questions relating to the pattern of regulation needed to achieve this purpose arise for consideration. What specific control devices are necessary for each agency? Should regulation of competing agencies be centered in one regulatory body? If the I. C. C. is the logical agency to attempt the task of coordination through regulation, should it be reorganized to insure adequate consideration of the economic advantages of each agency? Fourth, since the results ob-

[13] For Bankruptcy Act as amended on August 27, 1935, see 49 Stat. 911, c. 774; for the amendment of §3 of the Interstate Commerce Act, see 49 Stat. 607, c. 509, August 12, 1935.

tained from any regulatory legislation depend upon the interpretations of specific provisions and policies adopted, the implications of various policies that might be given effect are of great interest. What criteria should guide the regulatory body in determining whether to allow expansion or contraction of transport facilities? Should the minimum rates set for various competing agencies reflect differences in the cost of rendering the service of each agency? If so, how should cost be defined? What consideration should the regulatory body give to the promotional policies of the federal and state governments in determining its regulatory policy? Questions such as these merit serious analysis and discussion. Only a few can be commented upon here.

What Mr. Eastman hopes to achieve through his coordination-by-regulation proposal is

> "a system of transportation for the Nation which will supply the most efficient means of transport and furnish service as cheaply as is consistent with fair treatment of labor and with earnings which will support adequate credit and the ability to expand as need develops and to take advantage of all improvements in the art."[14]

While various interpretations are given the term "coordination" in the Coordinator's reports, this objective and other statements of Commissioner Eastman imply that a method must be found to fit each agency into its proper place in the transport sphere.[15] The task of coordination by regulation, then, is to find the proper economic sphere of each competing agency and give it the transport work to do for which it is most economically adapted. Since attainment of this ideal would give the people the maximum benefit of our resources devoted to transportation, few would question its soundness. Disagreement as to the proper transport policy usually centers rather upon the Coordinator's conclusion that centralized control of all competing agencies is the necessary or the best means available for achieving desirable coordination.

Economic Validity of Coordination-by-Regulation

Anyone who undertakes to question the economic validity of this basic thesis running like a thread through the Coordinator's reports and other public statements will find aligned against him not only the judgment of Commissioner Eastman and most regulatory officials but the weight of certain economists who have considered the issue. Yet some of the arguments advanced in support of this theory are untenable. For example, the argument is commonplace that railroads are at a competitive disadvantage as compared with motor and water carriers because the latter have received governmental subsidies in recent years, and that this situation justifies control of the rates and service of these competitors of rail carriers. It must be admitted that railroad security holders and rail-

[14] House Doc. No. 89, *op. cit.*, p. 8.

[15] In Senate Document No. 152, *op. cit.*, p. 12, appears this statement: "*Coordination with other forms of transportation.*—Each form of transportation—rail, water, highway, pipe line, and air—can perform certain service more cheaply or more efficiently than can any of the others. It should be protected in such service against destructive competition by the others, and at the same time provision should be made for easy interchange and the establishment of through routes and joint rates where such coordination is desirable." On page 18 the following statement appears: "Coordination, as defined in the *Coordination Case* (p. 328), is the 'combining [of] two or more forms of transportation in the interest of better service or economy.' Such combination, it was noted, 'may be effected by a single transportation agency or by the cooperative efforts of different agencies.' Coordination may also mean a division of the field of transportation, each agency concentrating on the work it can do best with a minimum of overlapping." The latter meaning is obviously the one underlying the Coordinator's scheme for unified control of all competing agencies.

road labor have been injured to some extent by failure of the states to collect from trucks and busses special fees sufficient to cover all costs of the public facilities allocable to these vehicles; and that complete elimination of highway subsidies to railroad competitors would doubtless divert considerable traffic from the highways back to the railroads. However, data to show conclusively the amount of subsidy to highway carriers are still lacking, except in a few instances. Moreover, so far as future policy is concerned, the fact that highway carriers may enjoy a governmental subsidy to the competitive disadvantage of rail carriers would in strict logic point to revision of our governmental policies in regard to uneconomic promotion of transportation facilities rather than to a policy of imposing upon these carriers the same brand of regulation that the public has demanded for the railroads in the past. It is probably out of the question to compensate railroad security-holders for damages resulting in the past from uneconomic competition of motor carriers favored by highway subsidies. If subsidy still results from present tax schedules, they should be revised not only to provide the states with sufficient revenues to pay total costs of highway construction and maintenance allocable to their use but also to apportion the tax burden upon the various vehicles according to some equitable standard, probably the gross ton-miles resulting from operation of each vehicle upon the public highways.

Realists in public administration are likely to argue, however, that it is one thing to point out the need for a revision of our governmental policies and another thing to achieve that revision in 48 states and the Federal Government. This position deserves consideration, for the railroads may die or pass from private to public ownership while legislators and interested public groups "hem and haw" over changes in tax policy. Even granting that motor carriers should be regulated in order to equalize the competitive situation, it is extremely doubtful that the railroads would obtain from regulation much relief from uneconomic promotion of their competitors. For the present, at least, relief through regulation would have to come through efforts to raise truck rates to a level covering carrier costs plus those incurred by the general taxpayer. But it is unlikely that a regulatory agency such as the I. C. C. could take into consideration the costs defrayed by the general taxpayer. It must base rates on costs actually incurred by the transporting agency, if rates are to be based on cost of service. Therefore, although regulation may indirectly afford the railroads some relief from uneconomic competition based upon highway subsidy, the conclusion appears justified that the most fruitful long-run course for the railroads and their sympathizers to follow lies in creating widespread recognition that uneconomic highway promotion should be abolished as rapidly as possible. This means that scientific factual studies of present highway taxation policies must be pursued much more vigorously than in the past. It is encouraging to note that a few states are working constructively toward this end, although subsidy to domestic water carriers has apparently abated but little.

Nor should the commonly advanced argument that in *fairness* to the stringently regulated railroads all other carriers should be subjected to the same degree of governmental control be considered very seriously. No amount of moralizing about what is *fair* or *unfair* will answer this question, except as a cloak or an apology for minority groups,

such as investors and rail labor, who desire to get "theirs" irrespective of the real public interest.[16] Only an impartial and thorough examination of the facts with regard to the economic characteristics of the various transport industries and the existing conditions of rendering service in terms of the public interest can produce a sound conclusion.

Mr. Eastman bases his conclusion that coordination necessitates regulation of motor and water carriers upon analysis of the effects (1) of the competitive situation between the railroads and these carriers and (2) of internal competition within the motor- and water-carrier industries. While these aspects of the question are related, this approach is somewhat confusing. It involves consideration of two separate problems, only one of which—the effects of competition among competing agencies—seems especially pertinent to the question of coordination by regulation. An analysis of the economic characteristics of motor carriers, for example, might show little public need for any regulation beyond safety and financial responsibility controls. Yet, on the other hand, competition for traffic between motor carriers and rail carriers might demand very restrictive control of rates and supply of service of both agencies. Or, an analysis of the economic effects of interagency competition might possibly reveal no public need for regulation of motor carriers to promote economic coordination or to protect shippers using their service, while the public interest might still require stringent regulation of railroad rates. On the other hand, if the question were centered upon the problem of determining whether motor carriers and water carriers should be regulated as to rates and service, consideration should, of course, be given to the effects of internal competition within each transport agency. The consideration given to both angles by the Coordinator doubtless reflects his interpretation that the Emergency Railroad Act of 1933 commanded him to seek means of improving transport conditions in all agencies, whether or not their operations raised coordination problems. It is apparent from his reports that the Coordinator believes both motor and water carriers raise serious problems of coordination.

The Federal Coordinator's analysis of the competitive relationships among rigidly regulated railroads, incompletely controlled water carriers, and uncontrolled interstate motor carriers[17] convinced him that interagency competition is definitely cutthroat in character. The oversupply of facilities resulting from lack of planning and control of motor- and water-carrier service and the depression slack in traffic volume had depressed rates to unremunerative levels, resulting in inability of the carriers to maintain and improve their properties, severe injury to their credit standing, and rate instability. According to the Coordinator, a policy of allowing competing agencies complete freedom to engage in price competition and to add to the supply of facilities would bring

[16] A firmer policy of reorganization of weak railroads in such manner as to exclude common stockholders and holders of junior liens whose securities are represented by property having no earning power, coupled with a more vigorous abandonment policy by the I.C.C., might do more to place certain railroads in a position to pay dividends and continue to meet service charges on funded debt. Rail labor has succeeded in holding up the rate of wages, but at the expense of loss of many jobs through traffic being diverted to other agencies of transport or slackening of demand. It is heartening to note that some of the recent reorganization plans submitted for consideration propose to exclude securityholders whose equity has disappeared as a result of transportation developments in the past decade or two.

[17] Interstate motor carriers were not subject to control by the I.C.C. prior to August 9, 1935, while intrastate motor carriers had been regulated to some extent by state commissions for nearly two decades in some instances.

results even more unsatisfactory to all concerned. While recognizing that competition is now sufficiently widespread and vigorous to protect the public against excessive rates in most cases, Mr. Eastman predicted that uncontrolled competition would bring rank discrimination in rates, a wasteful duplication of transport facilities, greater rate instability, unsatisfactory labor conditions, and eventually, perhaps, a transportation monopoly.

Consideration of the validity of Mr. Eastman's theory must be centered upon his assumption that cutthroat competition would inevitably appear, should a policy of competition uncontrolled by governmental authority be adopted. Does this assumption square with the facts? If competition is of the character assumed, does this mean that prevention of its undesirable effects requires regulation of all competing agencies or just those possessing the economic characteristics that are responsible for pressure to cut rates to unremunerative levels and to discriminate?

It is, of course, a well known historical fact that competition among the railroads themselves has frequently been destructive in character; and that when the rail carriers were not prevented by regulation from quoting low rates on traffic for which they were in competition with water carriers and from discriminating against intermediate points, they possessed the power virtually to destroy the water carriers. The development of widespread and vigorous competition from motor carriers has lessened to a considerable extent the incentive for engaging in discrimination for competitive purposes. However, the railroads possess a high proportion of overhead costs and still have a considerable volume of exclusive traffic left. Hence, if their rates were entirely uncontrolled, they would without doubt attempt to exact the last cent possible from their non-competitive traffic and make rates on competitive traffic low enough to stifle or impair competition. The other forms of transportation have little or no non-competitive traffic to sustain them in any such contest for traffic. Consequently, unless the out-of-pocket unit costs of rail carriers were above the average overall unit costs of motor and water carriers competing for the same traffic, the tendency under present supply conditions would be for destructive competition to drive rates so low as to threaten the existence of these agencies. Whether such rates would benefit the railroads would depend upon how close they would fall to out-of-pocket unit costs and how much non-competitive traffic exists against which high rates could be charged to produce the revenues needed to meet their total expenses.

The motor carriers have protested vigorously against petitions of the rail carriers to file lower rates "to meet truck competition" in recent years, and both water and motor carriers have objected to the railroad proposal to relax present limitations placed upon the Commission in granting fourth-section exceptions.[18] These actions seem to indicate that rail out-of-pocket costs per unit are not above the average overall cost per unit of motor and water carriers for the same traffic in many cases, and therefore the conclusion appears justified that continued regulation of rail rates is a public necessity for economic coordination. Agreement on this requirement of national public policy appears general throughout the country, although the continued difficulties experienced by

[18] See Hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives on H.R. 1668, 75th Cong., 1st sess., January 28, 29; February 2–17, 1937.

many railroads are raising the question in the minds of some as to whether regulation by the I. C. C. is free from responsibility for the unsatisfactory situation that exists.

On the other hand, does prevention of the undesirable effects of the tendency for cutthroat competition to emerge when transport agencies compete for traffic require control of the rates and service of the railroads' competitors in addition to necessary regulation of rail carriers? This question involves analysis of the ability of motor and water carriers to take competitive traffic from the railroads by cutting rates below an economic level. Assuming that governmental subsidy to motor and water carriers were eliminated, any traffic movement for which the average overall unit costs of the railroads under conditions of optimum utilization of capacity were distinctly above those of the motor or water carriers should be carried by the latter carriers, unless the supply of motor- and water-carrier service proved inadequate to move all the traffic offered at rates lower than the average overall unit costs of the railroads. With minimum rail rates established at the level of rail average overall costs per unit of traffic, the tendency under competition in cases where complete trucking costs were lower would be for rates on this traffic to settle at levels below the rail cost-rates and for the traffic to move over the lower-cost agency.[19] This statement assumes that the supply of truck service would expand quickly with the demand for this type of service and competition among the carriers unrestricted by convention or other method. However, if motor carriers were receiving subsidy from the state, the prescription of railroad minima at average overall costs per unit of traffic, when competing motor carriers were left free to establish their rates at points sufficiently below rail minima to get the traffic, might have the effect of weakening the railroads.

Yet, while this possible uneconomic effect might result from a policy of prescribing minimum rates for railroads without taking similar action with respect to trucks, it must be recognized that the courts are not likely to permit a regulatory commission to take into consideration costs defrayed by the state in addition to actual carrier costs in prescribing minimum rates for motor carriers. Avoidance of this undesirable effect would necessitate either allowing the railroads to compete freely for the traffic on the out-of-pocket principle or a policy of removal of any subsidy to rail competitors. As stated above, the latter policy is the logical one, if reasonably immediate action on the matter could be obtained in the 48 legislatures. Setting aside the subsidy question as outside regulatory policy with regard to minimum rate regulation, although admitting that the states must remove subsidy before prescription of minimum cost rates for competing agencies of transport could possibly allocate traffic on an economic basis, the conclusion is justified that prescription of minimum rail rates would prevent rail carriers, in cases where rail and truck costs are equal or truck costs lower, from engaging in ruinous competition and participating in traffic for which the trucks are the lower-cost agency.

[19] Under present conditions railroads are generally not operating at optimum utilization of capacity. Therefore, minimum rates established on the basis of *actual* average overall costs per unit of traffic would prevent railroads from substantially improving their ratios of utilization of capital facilities, since marginal costs are below average costs because of underutilization. In determining social policy with regard to rates under coordinated regulation, this factor should be given proper consideration.

However, if rail cost-rates were fixed by governmental authority as minima, would competitors of rail carriers cut below these rail minima on the out-of-pocket principle in order to obtain traffic for which rail carriers have the lower average overall costs per unit of traffic at optimum utilization of capacity? If rail competitors obtained traffic by quoting rates that would return less than their overall cost of service and lower than the cost minima prescribed for the railroads, then the traffic might flow over the agency not most economically adapted to the movement and having higher costs. A further result might be petitions by rail carriers to lower their rates "to meet truck competition" or other competition, with the result that the rate level for all carriers might fall to an unprofitable and uneconomic position. Such a situation would clearly demand regulation of minimum rates of rail competitors in order to safeguard to rail carriers that traffic for which they are the lower-cost agency, just as protection of motor carriers in the enjoyment of traffic for which their average overall unit costs are lower than similar rail costs would necessitate the fixing of minimum cost-rates for rail carriers. Therefore it is theoretically quite conceivable that rate situations might arise which would injure rail carriers when regulated and allow traffic to move by other than the lowest-cost agency unless both rail carriers and their competitors are regulated. This conclusion would hold even were rail competitors completely unsubsidized, so long as opportunities existed for them to cut rates below prescribed rail cost-rates when average overall costs per unit of traffic of these carriers were higher than rail costs. To what extent have these rate situations arisen?

The strong belief held by Mr. Eastman that cutthroat competition between the rails and their competitors cannot be prevented by regulation of the railroads alone must be based upon the assumption that motor and water carriers either (1) have a sufficient proportion of overhead costs to exert pressure upon them to cut rates below the overall cost of rendering service to obtain volume when unutilized capacity exists or (2) that the entrepreneurs in these industries do not know their costs well enough to price their services at cost. If competitors of the rails had no overhead costs at all, an obviously untrue assumption, and knew their direct costs, it would seem unlikely that they would be willing to meet rail competition when rail costs and the minimum rates prescribed by government authority were lower. Of course, motor and water carriers which do not know their direct costs might quote rates considerably below direct cost to obtain traffic, so long as their capital lasted. Assuming, however, at least knowledge of direct costs, motor and water carriers, if unregulated as to rates, would be free to cut under rail rates and take traffic whenever their direct costs were below the rail cost-rates prescribed as minima, even though the rates at which they moved the traffic were insufficient to return the average overall unit costs of the truck- or water-service and their average overall unit costs were higher than similar rail costs. Mr. Eastman's view that competition would be destructive, even with rails stringently regulated, without regulation of motor and water carriers is not fully explained in terms of economic theory. However, doubtless both the factors of overhead costs and ignorance of costs were given consideration in arriving at this conclusion.

The difficulty in evaluating this theory lies in the lack of basic facts. Only

very sketchy data exist with regard to motor-carrier costs, but such as are available seem to indicate that a very large proportion of the costs of these carriers is direct. This is attributable to lack of any necessity to invest in right-of-way, the small capacity of the moving unit, the lack of investment in expensive terminals, and short life of equipment. The proportion of overhead costs in the water-carrier industry is doubtless also lower than in the case of railroads, the result in part of lack of investment in right-of-way and terminal facilities. The lower proportions of overhead costs in these industries and the relative lack of non-competitive traffic point to their being less vigorous instigators of cut-throat competition in the interagency field than the railroads, if the field were thrown open to free rate competition. Until more reliable facts regarding relative costs and the cost characteristics of these competing carriers can be obtained, the question may only be tentatively answered.

While less justification exists for regulation of motor and water carriers to prevent cutthroat, interagency competition than for railroad regulation, the theory that Mr. Eastman advances is probably sound. This judgment, however, does not imply failure to recognize the great difficulties with which the Commission will be confronted in attempting to adjust minimum rates in such manner as to allocate traffic to the most efficient agency because of the nature of the costing problems in transportation nor the fact that cost is a difficult concept to which to give specific content.[20] The desirability of allowing the high-cost agency to take traffic from the low-cost form of transport[21] by meeting the rates of the lower-cost agency in some particular situations is also recognized.

The Coordinator also found that a public need for regulation of domestic water and motor carriers derives from the internal competition within these industries. He attributed the generally unprofitable conditions prevailing in the water-carrier industry to uncontrolled competition. The bill in which he proposed to transfer the controls exercised by the Maritime Commission[22] over water carriers to the I. C. C. and to provide for these carriers and wharfingers a comprehensive system of regulation akin to that now applied to railroads and in process of application to motor carriers has not been enacted by Congress. Opposition to further regulation of domestic water carriers came largely from contract and private carriers, which chiefly serve the larger interests. Strenuous opposition was also voiced by the so-called wharfingers, particularly the public ports. These groups advanced the argument

[20] For valuable discussions of the cost concept as applied to railroad transportation and methods of computing "out-of-pocket" and "complete" costs, see Lorenz, M. O. and Elmore, B. T., "Out-of-Pocket Cost as a Factor in Determining Freight Rates," compiled by the Bureau of Statistics, I.C.C., Washington, D. C., October, 1933; Elmore, B. T., "Average Railroad Freight Transportation Costs," Bureau of Statistics, I.C.C., Washington, D. C., December, 1936; and "Report on Cost Finding in Railway Freight Service for Regulatory Purposes," issued by the Federal Coordinator of Transportation, Washington, D. C., June, 1936.

[21] For an interesting discussion of this question, see D. Philip Locklin, "Transport Coordination and Rate Policy," 15 *Harvard Business Review* 417–28 (1937).

[22] The Merchant Marine Act of 1936 (Public Act No. 835, 74th Cong., 2d sess.) transferred to the U. S. Maritime Commission the regulation exercised formerly by the Shipping Board Bureau of the Department of Commerce over domestic water carriers. This Act provides also that, after expiration of two years from the effective date of the Act, the President is authorized to transfer by Executive Order to the I.C.C. any or all regulatory powers, duties, and functions which are vested in the U. S. Maritime Commission. This power is permissive, but it affords the President some opportunity to coordinate existing regulation of domestic water carriers even though the Coordinator's bill to provide stronger regulation is not enacted.

that the regulation proposed would work out largely for the benefit of common carriers and railroads. Shipper organizations in the Mississippi Valley, including the leading farm organizations, opposed regulation of domestic water carriers, fearful lest they lose under centralized regulation the advantage of low water rates and water transport as a "yardstick" with which to keep down rail rates. The common carriers, however, very largely favor the regulation proposed. Analysis of the economic bases for regulation of the inland, coastwise, and intercoastal water carriers would require another paper.

The Coordinator also refutes the contention of those who maintain that a system of free and open competition is well adapted to the operation of highway carriers, because of the ease of entrance into the business and the practicability of small-scale operations without large investments of capital. Even if this agency could be properly considered alone, he believes this contention

> "... is refuted by the general dissatisfaction of the ... trucks with existing conditions, their efforts at self-regulation, the growing demand among them for public regulation, the prevalence of State regulation, and the openly expressed views of many shippers."[23]

He maintains that "too often rates have been demoralized by operators with little or no knowledge of costs or by those who have been driven by sheer financial necessity to quote rates which they know to be unremunerative";[24] that these low rates result in low wages and poor labor conditions, unsafe and irresponsible operations, and much wasted capital because of a high turnover in the business; and that the cutthroat competition in the industry has resulted in "wide-spread uncertainty, instability, distrust among shippers, and undue discrimination and prejudice, particularly in favor of the large shipper."[25]

While factual data regarding motor-carrier operations and costs are so scarce as to make analysis extremely difficult and precarious, the Coordinator's theory that these effects would flow from uncontrolled competition in the motor-carrier industry when the problem of interagency competition is abstracted needs some qualification. It appears to be based upon the assumption that competition tends to be self-destructive in the motor-carrier industry. Is this assumption in line with the facts?

Upon analysis, the motor-carrier industry appears largely to lack the characteristics of those industries in which competition tends sooner or later to eliminate itself and monopoly to develop. So long as only a few hundred dollars and no investment in right-of-way are required to enter the business, it is unlikely that the number of carriers will be so small as to produce monopolistic rate practices. Competition will keep rates down to reasonable levels. Present facts appear to justify the conclusion that motor-carrier costs tend to vary closely with volume of traffic, since overhead costs of the highway are paid in a fashion that constitutes variable carrier costs. In this country truck and bus concerns contribute to support of the highways largely on a *use* basis. These concerns, especially truck operators, do not maintain expensive terminals as do the railroads. Many have no terminals whatever. Nor is the capacity of the moving unit large relative to particular shipments as in the case of the railroads. Unutilized capacity is not so likely to develop from traffic variations, and increases of traffic re-

[23] House Doc. No. 89, *op. cit.*, p. 12.
[24] Senate Doc. No. 152, *op. cit.*, p. 14.
[25] *Ibid.*, p. 22.

quire almost immediately new capital outlay for further equipment to handle the increased business. Consequently, the relatively low proportion of overhead to total costs relieves motor carriers from much of the pressure that exists upon railroads to cut rates on the out-of-pocket principle to obtain volume. Under free competition the ease of shifting equipment from one route where the demand for service may be slack or declining to another offering more profitable traffic possibilities and the shorter life of the equipment lessen measurably the incentive to engage in ruinous competition. Because of the lack of non-competitive traffic upon which the burden of producing the revenues needed to compensate for failure of the traffic bearing the preferential rates to produce revenue equal to total costs could be placed and because of the relatively low proportion of overhead costs, it is doubtful that a very real incentive exists to discriminate in rates charged.

If internal competition is cutthroat in the motor-carrier industry, producing the unsatisfactory results claimed by Mr. Eastman, other conditions seem to be largely responsible. While it should be admitted that any conclusion must be tentative until sufficient data are made available to indicate beyond question the true character of costs in this industry, it must be recognized that the Coordinator failed to support by convincing data of this kind his conclusion that as a result of internal competition motor carriers are "driven by sheer financial necessity to quote rates which they know to be unremunerative." The new Bureau of Motor Carriers should tackle the job of compiling comprehensive data regarding motor-carrier operations and costs.[26]

No doubt, ignorance of costs caused by low business qualifications of the entrepreneurs in this industry and the prevailing small-scale operations are factors which have contributed to producing the competitive conditions to which Mr. Eastman refers in the motor-carrier industry. However, in a dynamic economic world a similar situation probably exists in many other industries with a large number of sellers and vigorous competition. If it were not for the existence of railroads and the ability of motor carriers disregarding complete costs to obtain traffic for which the rails are the lowest-cost agency, it might seriously be questioned whether cutthroat competition arising from ignorance of costs required regulation. In considering this question the social advantages of the pressure toward efficient use of resources attributable to free competition would have to be balanced against possible social waste resulting from needless duplication of facilities and labor in providing a certain quantity of transport service. However, the measurement of social waste from competition is extremely difficult and intangible. In these days of monopolistic enterprises, maintenance of automatic pressures toward efficiency is important, until new methods to take the place of competition are worked out. The consumer would not lose in a situation in which some duplication of transport facilities developed, unless the labor and capital in excess of what is essential to provide the necessary supply of service could be applied with greater productiveness in other industries or avocations. With respect to

[26] The plan of organization for the Motor Carrier Bureau calls for a Section of Research to make extensive investigations of motor transport problems for guidance of the Commission and the nation. Lack of funds has held up this projected and much needed development.

wages of labor and interest on capital devoted to the industry, who is competent to judge what labor and capital are worth? Consideration should also be given to the question of whether such conditions would likely prove transitory.

While the issue of whether it is economic to regulate the motor- and water-carrier industries cannot be decided upon the basis of analysis restricted to the effects of internal competition, strict logic demands that the various elements of the problem be separated to the end that the controls adopted be based squarely upon the conditions that require them in the public interest. This is essential not only for designing controls well adapted to the public objectives for regulation but also as a basis for public understanding of these objectives prerequisite to intelligent criticism of regulatory policies. If this analysis is correct, such economic bases for regulation of rates and service of the motor carriers as exist appear to derive largely from the competitive relationship between them and competing agencies of transport, particularly the railroads.

Reorganization of Administration of Transport Regulation

The Coordinator made certain suggestions with respect to administering regulation of competing transport agencies in order to insure a consistent policy with respect to coordination and specialized consideration of the economic advantages and problems of each agency. His decision that all regulation of competing agencies should be centralized in one agency is sound. Any other policy, except possibly the placing of all transport regulatory commissions under a cabinet official, would lead to identification of the interests of the particular regulatory body with those of the types of carriers regulated, the exact situation that has prevailed so unsatisfactorily in the past. Mr. Eastman rejects the use of separate commissions under a Secretary of Transport because of its political implications. His conclusion that the I. C. C., if reorganized, is the logical agency to undertake the tremendous task of coordination through regulation is also sound. The bill that he recommended to Congress to effect the reorganization he felt was needed provided for five new commissioners, a permanent chairman appointed by the President to be the administrative head of the Commission, a permanent Coordinator of Transportation to be appointed by the President from the membership of the Commission, organization of the Commission into four divisions, and a Control Board made up of the chairmen of the four divisions and the Chairman of the Commission to decide matters involving general transportation policy. Emphasis should be given his proposal to set up a Control Board of five members to decide general policy. In such a large agency as the I. C. C., having so many controversial questions to handle, a small number of policy-makers is essential to expedient transaction of business. Question might even be raised as to whether a smaller number than five would be preferable. Dividing the Commission into separate divisions, each to administer regulation of a major transport agency, subject to appeal to and the precedent of the Control Board on matters involving general policy, seems wise. As a matter of fact, while the reorganization bill has yet to be enacted, the Commission immediately after enactment of the Motor Carrier Act of 1935 established a separate division to handle motor-carrier regulation and a Bureau of Motor Carriers, staffed with men thoroughly experienced in motor-car-

rier operations and regulation, to assist this division in its work.

The Commission, with two dissents, vigorously opposed the reorganization bill proposed by the Coordinator, chiefly on the ground that it could carry out all reorganization measures that were needed on its own authority and that the Control Board proposal would have the practical effect of reducing the members not on it to the status of examiners. The Commission made no recommendation in regard to continuance of the office of Federal Coordinator of Transportation on a permanent basis. Since the bill to regulate water carriers and wharfingers has yet to be enacted, it is still too early to say whether the reorganization bill is definitely dead. The recommendations for reorganization of the executive agencies of the Federal Government made by the President's Committee on Administrative Management further complicate the issue. However, the office of Federal Coordinator expired on June 16, 1936, largely because of the opposition of railroad labor fearing loss of jobs and railroad managements fearing loss of certain competitive advantages and, to some extent, their jobs under the measures recommended by the Coordinator to eliminate wastes of railroad operation.

Whether one can agree with all recommendations made by Mr. Eastman when holding this office or not, the lapsing of the important work which he began is a national loss. Our complex transportation problems should be studied continuously by a staff of experts not tied down by administrative routine. Failure of the railroads to place in operation some of the more worthy suggestions made by Mr. Eastman and his staff looking toward a reduction of wastes in railroading seems to justify the conclusion that an official such as the Coordinator with authority to issue mandatory orders to the railroads is necessary, if rapid progress is to be made in solving our urgent railroad problems. Wholesale reorganization under Section 77 of the Bankruptcy Act or government ownership may be the result of the unwillingness of the railroads and the interests controlling them to cooperate in making the whole effort of the Coordinator more successful.

In conclusion, Mr. Eastman's ideal of regulation of all competing agencies of transport by the I. C. C. has not been fully provided for by law, although the passing of the Motor Carrier Act of 1935 brings us fairly close to the situation needed to test the validity of his theory that the most practicable way to achieve coordination is through regulation of these competing agencies. On the whole, his program of regulation is worth a fair trial, although the case which he presented for regulation of all agencies is not as clear-cut as might be desired. The Commission is now faced with the problem of deciding how large a supply of motor- and rail-carrier facilities it may economically allow and what rate policies it should adopt to prevent undesirable effects of such destructive competition as may arise. Underlying these problems of regulatory policy is the fundamental question of whether it is desirable public policy to continue to subsidize motor, air, and especially water carriers. Unless Congress and the state legislatures eliminate such subsidy as may exist or equalize subsidies to all competing carriers, the Commission's problem of determining and executing regulatory policies that will promote the seeking of each competing form of transport for its own economic level will be rendered most difficult, if not impossible.

Problems of a Housing Enforcement Program

By L. M. GRAVES* *and* ALFRED H. FLETCHER†

Introduction

THE diagnosis of the problem of providing decent and sanitary homes for the lowest income group seems to be definite and clear cut, and yet its solution is many sided. The diagnosis is poverty—poverty of the tenants and poor income from the slum dwellings to the owners. The solution, however, is not simply that of publicly subsidized housing, nor of enforcing sanitary and housing ordinances, nor of slum clearance, nor of great private housing developments, nor all these together.

The solution in its entirety must include provisions for people who are poor; those who have no steady jobs; those on relief; those who are old or blind; those whose husbands may be habitual drunkards or known by social agencies as "good for nothings"; those whose income will permit the payment of only one dollar a week rent for the entire living unit whether they need one room or five rooms; those who can pay only two dollars a week rent; and those who can pay only three dollars a week rent for the entire living unit. In Memphis this group includes approximately 50% of the population, 80% of this 50% being negroes. These are facts and not estimates.

It is the problem of housing poor people, then, which to public health departments and possibly to other interests is the most important of all. Without an attack on this lowest income group, there will be no permanent, substantial, public-health improvement. Sanitary facilities in the home cannot be rented nor maintained under present conditions by poor people. There is no agency or program now aimed, at least not so as to hit the bull's-eye, at this lowest income group. Some, in fact, most, of the above listed groups in which the greatest housing needs exist are not eligible for housing in federal housing projects.

There is some truth in the oft repeated statement that "new large-scale good housing built for the large middle class income groups will release moderately good housing for occupancy by the next lower income groups, bringing about a general upward movement that will empty slum properties for the wreckers." However, studies of the slums in Memphis indicate that this oft repeated quotation is not complete and should be amended to read: "New large-scale good housing for the large middle class income groups will release moderately good housing for occupancy by the next lower income group, bringing about a general upward movement of people that will empty many slum properties for the wreckers and *will thus take the cause of slums into slightly better housing to turn it into a slum for future emptying.*" A slum is a slum because there is no income, or insufficient income, to build or maintain the housing in a decent or sanitary condition. An upward movement of poor people into a better housing area can bring blight and disaster to any district with distressing rapidity. In the long run, one dollar a week will rent a one-dollar-a-week house and two dollars a week will rent a two-dollar-a-week house.

In trying to arrive at the solution, it

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should be recognized that an average figure or picture of housing or slums for the United States may be misleading for any individual section or city of the United States. An average picture of conditions for the country as a whole, based on actual facts and not estimates and guesses, may indicate that 9.6% of the shortage in non-farm family dwelling units exists in the rental group paying less than $10.00 a month rent, while a picture of conditions in Memphis indicates that this figure if used to show needs for housing is grossly misleading. Eight and six-tenths percent of all dwellings in the City are dilapidated to the point that it would not be practical to attempt patching or remodeling to meet a minimum standard. These dilapidated dwellings are occupied by the people in the $10.00-and-under rent group. Seventy-three percent of the colored and 6% of the white population, or 34.5% of the total population, live in the poorest of substandard housing and pay less than $9.00 a month rent. Other figures prove beyond a doubt, if need is the criterion used, that the greatest need for housing in Memphis is in the $10.00-a-month-or-less rent group. This group is not, of course, of interest to private capital since the returns are not sufficient for the most part to meet expenses.

Memphis Program

In an attempt to develop a fundamentally sound housing enforcement program, the Department of Health has made a series of studies as to the make-up of the Memphis slums. The first survey in 1933 and 1934, which covered the entire City, seemed to show a definite relationship between outdoor communal toilets and typhoid fever and between housing when grouped according to a housing index and infant mortality. The second study in 1936 and 1937 indicated that a slum is not uniform and may be classified into varying degrees of "slumness" with cores of the very worst type of slum in the center or centers and varying degrees of progressively better slum housing radiating out from the centers or cores to the rim or blighted area. This blighted rim serves as a barrier between the slums and standard housing areas.

Table I summarizes the results of the 1936 and 1937 study, which was previously discussed in an article by the authors,[1] when the study was about 40% completed. This table presents data from sapproximately 80% of the total substandard housing areas of Memphis. The housing index used in this table is a numerical value computed for each dwelling and for each block of dwellings, and indicates that the block averages a certain percent of a minimum standard. The 0 to 29% group, for example, includes all blocks whose average housing index for all dwellings in the blocks is less than 30% of a minimum standard. The minimum standard arbitrarily adopted for Memphis is a dwelling that is constructed reasonably tight to protect the occupants from the weather; screened for protection against flies and mosquitoes; provided with inside private wash-down toilets; a water faucet and sink connected to the sanitary sewer; served by the municipal water supply; provided with adequate natural light and ventilation; having adequate provisions for the use of heating facilities; facing a street; and in a reasonable state of repair.[2]

[1] L. M. Graves and A. H. Fletcher, "Developing a Housing Program in a Southern City," 27 *American Journal of Public Health* 645–54 (July, 1937).

[2] The system of grading is described in detail by Alfred H. Fletcher in "A Yardstick for Slums," *Engineering News Record*, August 26, 1937.

TABLE I. RENTALS, VACANCIES AND CROWDING, CLASSIFIED ACCORDING TO DEGREE OF BAD HOUSING*

Housing Index	Total Units Occupied	Total Population Housed	Percent Vacant	Average Weekly Rent per Unit	Average Rooms per Unit	Average Weekly Rent per Room	Average Persons per Room
0- 29.9	2,342	7,487	4.87%	$1.82	2.91	$0.620	1.09
30- 49.9	7,670	27,276	6.49	2.34	3.31	0.708	1.07
50- 64.9	7,290	28,440	4.27	2.92	3.93	0.740	0.99
65- 79.9	5,571	24,488	4.29	3.92	4.69	0.830	0.93
80-100.0	5,894	30,321	3.26	6.97	6.29	1.108	0.81
Totals	28,767	118,142	4.59	3.70	4.31	0.850	0.95

* See 27 *American Journal of Public Health* 653 (Table I, ref. 1, for comparison with 1936 figures).

The key facts used for judging the dwellings surveyed are: (1) location, condition, and use of toilet; (2) location, condition, and use of water and sink; (3) condition of screens, roofs, floors, walls, ceilings, and chimneys; (4) number of families provided for by the dwelling; (5) number of persons housed per room; (6) position of the dwelling on the lot (front or rear).

These factors, when assigned more or less arbitrary numerical values, with deductions for unsatisfactory condition of the various items, give a picture of the degree of bad housing in comparison with the accepted minimum. The resulting figure for a dwelling is called the "sanitary rating" or "sanitary factor." By grouping dwellings into blocks of dwellings and combining with this figure the value referred to as a rear-dwelling factor, a picture is obtained of conditions as they vary from block to block and area to area.

The scoring system is based on the allowance of such credit for the number (and in some cases the convenience) of water supply facilities and toilets, as well as for the general structural condition of the dwelling and for the number of persons housed per room. Deductions are made, depending on the degree of unsatisfactoriness of these items.

The two-year summary presented in Table I supports the conclusions of the 1936 report that:

"The law of supply and demand is plainly indicated. As the rents decrease the housing gets worse, the vacancies increase, crowding increases and rooms per unit decrease. It would seem to point the way to where to apply enforcement proceedings in order to get the greatest returns for effort expended. Private capital getting reasonable rents and not furnishing a minimum standard house should be forced and should welcome this enforcement on all owners without exception, to meet the standard in order to bring all houses in the blighted areas up to a decent standard. However, any effort to enforce minimum standards in the very low rental slum areas where the existing conditions are very bad can result only in slum clearance. This effort is worth while only where there is a sufficient per cent of vacancies, and should be directed toward the elimination of the worst dwellings."

Future Plans

The question may well be asked, as a result of these studies, what are the plans for the future housing enforcement program of the Department of Health and what will this program accomplish in the way of improving existing conditions? As a result of these studies up to the present time, when viewed from a public health standpoint, several fundamental facts stand out:

1. The poorest people live in the poorest houses for which the lowest, if any rents, are collected;

2. There is a definite correlation between rents paid and the score made by the dwellings, as judged from the stand-

point of housing conditions by the Department of Health;

3. In view of the facts upon which the second fundamental statement made above is based, there seems to be some foundation for the assumption that much of the public resentment, as well as the resentment of students of housing, against the greed and selfishness of owners of slum housing is unwarranted. The number of conveniences and sanitary facilities and their maintenance improve where economic rents are paid and decrease directly as rents decrease.

4. It is felt that, if a planned concerted drive is made for strict enforcement of a housing ordinance on the section of the slum paying the best rents, much permanent good can be accomplished in securing minimum standard housing and minimum standard housing areas or neighborhoods. Such a program should and will enlist the hearty cooperation of property owners who will benefit by this uniform enforcement for a neighborhood.

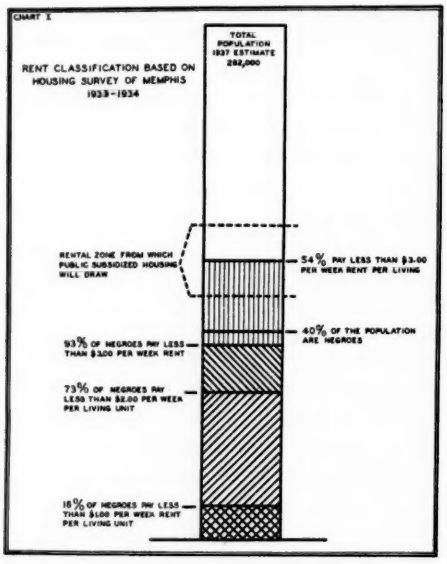
The blighted area or outer rim of the slum characterized by higher rents and better sanitation is undoubtedly the most promising field for obtaining improvements by an energetic enforcement program. Owners are better able to meet these demands because of better returns, and the general improvement of the area as a unit will be helpful in attracting paying tenants as the dilapidated insanitary houses in this area are brought up to the minimum standard or are vacated and torn down. Of course, the tenant paying less than an economic rent will be forced to pay more or move. A gradual screening or squeezing program of this sort will eventually progress to the point where the owners will find it uneconomical to meet the demands of the Department of Health and houses will be vacated and in many cases torn down as the demands are enforced. This point will be reached when the "illusive sharp dividing line which is obviously impossible to determine" is reached. It seems that few cities have used the enforcement weapon in the most strategic manner in improving and decreasing the size of their slums. It is planned to continue the enforcement program in Memphis as initiated early in 1936 along the lines suggested above.

Enforcement Agencies and Publicly Subsidized Housing Agencies Both Working on Top Section of Slums

It may be noted here that the enforcement agencies and the publicly subsidized housing programs are both working on this top section of the slums. The term "subsidized housing agency" as used in this paper refers to any agency that does now or might be set up in the future to assist tenants individually, or as a group, in obtaining a minimum standard house by subsidizing their rent, either indirectly through capital grant subsidy or annual rent subsidy to the tenant, or indirectly through individual rent subsidy to the individual owner of houses rented to eligible tenants, or in any other similar manner.

In an attempt to visualize the housing problem in Memphis and to illustrate the present weakness in the method of attack, two charts have been prepared showing the population of Memphis as a bar or a column and showing the percent of people in Memphis in certain classes or groups as percents of the length of the bar. One of these charts is based on figures from the 1933–4 housing survey of the entire City and the other is based on figures from the 1936–7 studies of the slums and blighted areas of Memphis.

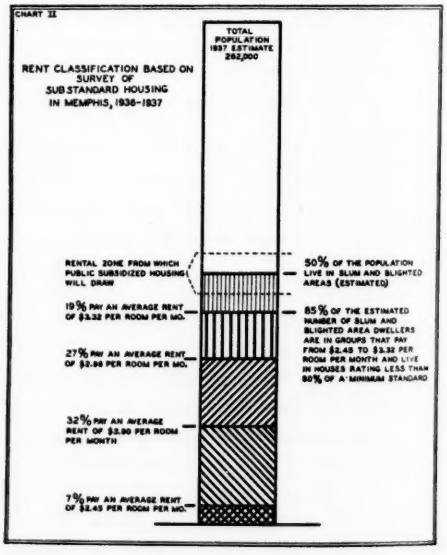
Chart I which presents the 1933–4 figures indicates that over ½ of the population of Memphis pay less than $3.00 per week, or $13.00 per month rent for the entire living unit. It can also be noted that a very large part of the group paying these low rents are negroes and that almost the entire negro population fall within



this very low rental classification. From this it can be seen that the housing problem in Memphis is largely a problem of housing the negro whose income is exceptionally low. Less than ¼ of the negro population pay as much as $2.00 a week rent. If $5.00 or $6.00 a room per month is the rental set for the federal housing projects, then the zone from which occupants of these two projects will be drawn will undoubtedly be somewhere near as shown on Chart I, i.e., in the neighborhood of the 54% line. The public health need, however, for subsidized housing is greatest in the bottom section of the bar where housing conditions are worst. This is where the rents collected are the lowest, since the people living here are the poorest. In addition, the enforcement agency can best handle, in fact, can only handle the problem for permanent and effective results in the top section of the slum.

Chart II which presents the 1936–7 figures outlines a rental classification of 118,142 people, with the survey estimated as approximately 80% complete. This represents approximately 30,000 dwellings. It can be seen that the average rent paid by the three lowest classifications which is 66% of the estimated 50% of the population who live in the substandard areas is less than $3.00 per room per month.

The rental zone for the federal housing projects is shown as just above the 50% line, since rentals in the federal projects are expected to be in the $5.00 and $6.00 per room per month class. As pointed out in the discussion of Chart I, the



greatest public health need is in the bottom section of the bar which represents the worst housing conditions. Here the rents are lowest because the occupants are poorest.

It should be evident, therefore, that publicly subsidized housing and enforcement programs are both working on the same group and, if an energetic publicly subsidized housing program is carried on, the housing enforcement agency will probably have to withdraw from its program. The drawing or fear of drawing the cream of the paying tenants away from private owners of houses catering to this group will make it almost impossible to get their cooperation because of what will be referred to as unfair competition. The Department of Health will then have to and probably should confine its activities to alleviating complaints as best it can and carrying on what will be generally admitted to be an impossible, ineffective, educational campaign of teaching slum dwellers to live healthfully without adequate and satisfactory sanitary facilities. It may be said here that this paper should in no way be considered as criticism of the two federal housing projects in Memphis, but as pointing to the great need for housing for the "forgotten children" of families unable to pay an economic rent and living under the worst conditions of insanitation and dilapidation.

Cooperative Program Desirable

On the other hand, a cooperative program would seem to promise the most rapid and effective housing program that could be devised. The enforcement agencies could concentrate on the top section or blighted areas of the slums and work down the scale as far as possible, requiring minimum standards in these better sections of the slums where rents are paid and condemning all dilapidated and non-conforming houses. Then the publicly subsidized housing program could supply houses for the group that pay almost no rent, for those on relief, or for those who can pay only at times. Publicly subsidized housing could have as its goal, then, the lowest 5 or 10 or even 15% of the population without worrying about this "illusive sharp dividing line which obviously cannot be determined." The dividing line in the lowest 15% can be taken as zero and would be a logical base line from which to start developing a publicly subsidized housing program. It seems entirely possible then for the enforcement agency to start at the top of this slum dwelling group, let us say 30% of our population, and by working down the scale could actually force minimum standards to be met by some 10 or possibly 15% of our population, so that the enforcement program would meet the publicly subsidized housing program half way between the upper and lower lines.

Housing for Relief Workers

The second of the last two housing studies in Memphis was made of the Works Progress Administration work-relief rolls and the general direct relief rolls as of June, 1937. It was found that approximately 80% of these WPA clients and 86% of the general direct relief clients, including both white and colored, live in the slums of Memphis. This statement is based on the fact that they live in blocks which rate less than 80% of a minimum standard for decent housing as determined by the Department of Health.[3] It should be pointed out here that the Memphis Health Department minimum standard, which is

[3] "A Yardstick for Slums," *op. cit.*

the standard referred to throughout this discussion, is considerably lower than the federal public housing minimum standard. The Memphis Health Department minimum is possibly lower than the average citizen would consider essential to decent living. It does not include electric lighting or gas connections, running hot water, any system of heating except flues so located that the occupant can install stoves and have flues for proper venting. It also does not include a bathtub and other items included in the present publicly subsidized housing projects. The results of the study are summarized in Table II.

In considering the colored families on the WPA rolls, we find that 25% or approximately 667 colored families live under the very poorest of slum conditions. Another 35%, or a total of approximately 6,400 colored people, live in blocks that average less than 50% of our minimum standard. It should also be pointed out that 90% of all colored families on WPA relief definitely live in the slums of Memphis in blocks that average below 80% of our minimum standard, which, it has already been pointed out, is a low minimum standard. Among the white people on relief the story is similar but the percentage living in the poorest sections is somewhat lower. Only about 6.6% live in the very poorest of the poor blocks, but 23.5% as compared to 60% among the colored, live in blocks where the dwellings average less than 50% of our minimum standard. Seventy percent, or approximately 8,000 white people whose bread winners are on relief, live in the slums in which the blocks average less than 80% of the minimum standard. If we combine these figures, we find, as stated above, that approximately ⅓ of all people supported by the WPA, on the date of the survey, definitely lived in the slums of Memphis.

Study of the general direct relief rolls of the Tennessee Welfare Commission indicates that conditions among these clients are worse than among the WPA clients. Seventy-six percent instead of 68.5% of the whites live in blocks rating less than 80% of the minimum standard, while among the colored people 93% in-

TABLE II. DISTRIBUTION OF WPA AND GENERAL DIRECT RELIEF CLIENTS ACCORDING TO HOUSING CONDITION

Housing Index	White		Colored		Totals	
	Percent	Accumulative Percent	Percent	Accumulative Percent	Percent	Accumulative Percent
	Works Progress Administration Relief Roll*					
0– 29.9	6.6%		24.7%		15.0%	
30– 49.9	16.9	23.5%	34.5	59.2%	25.1	40.1%
50– 64.9	23.5	47.0	18.6	77.8	21.2	61.3
65– 79.9	21.5	68.5	11.6	89.4	17.0	78.3
80–100.0	31.5		10.6		21.7	
	General Direct Relief Roll†					
0– 29.9	10.0		24.4		18.2	
30– 49.9	21.1	31.1	40.7	65.1	32.3	50.5
50– 64.9	26.6	57.7	18.5	83.6	22.0	72.5
65– 79.9	18.2	76.0	9.8	93.0	13.4	85.9
80–100.0	24.1		6.6		14.1	

* A 25% sample of the 5,588 families on the rolls, June, 1937.
† 100% of the families on the rolls surveyed.

stead of 89% live in blocks rating less than 80% of the minimum standard.

Housing for Relief Clients Important

Of course, the question may arise in the minds of many as to whether we will always have people on relief. No doubt the relief load will vary considerably, with a minimum load during good times and a maximum load during depression. It is possible, therefore, that for the very lowest group or for the relief group the present program of publicly subsidized housing is not the solution. Nevertheless, from a public health standpoint, this is the most important group to be provided for and unless the present program is changed considerably the Department of Health will be hindered rather than helped in its effort to provide better sanitary conditions for slum dwellers. It might be found desirable to see to it that those on relief be furnished minimum standard housing as a part of their relief through government leasing of approved, privately owned houses. This method would result in much repair and improvement work both on the houses and in the spacing of groups of houses. An added advantage in this plan would be the elasticity of leasing the number needed to care for the relief load. As the clients leave for private employment, the demand for private houses increases and the need for leased houses decreases. Another problem at this bottom section of the slum may be the mentally deficient ones or families in which the bread winner is worthless, shiftless, lazy, given to drunkenness, and otherwise unfit to provide for the family. Some type of institutionally directed, self-supporting project may be the answer to this problem.

"There are in every city—and Philadelphia is no exception—many families who have become so degraded they do not know how to live in a hygienic way. There are problem families who need case work treatment. Nine out of ten families will respond to good housing, but no amount of good housing will lift others out of the depth into which they have fallen. Some are mental cases, some health cases, some are degenerates. They would bring even good houses down to the level of the slum houses. For the sake of society they must be reclaimed or segregated under municipal control. Until they and others less subnormal who persistently practice sloppy living are forcibly restrained from fouling the houses they occupy, they will continue to make slums. Such families should be subjected to the compulsion of instructive inspection, and when such educational approach proves inadequate they should be removed to municipal colonies, forced to labor in the open, given medical and social treatment, and be allowed to leave such control only when they have demonstrated they can so maintain hygienic living that they will not be a menace to society."[4]

These suggestions are made to indicate possibilities rather than to attempt to solve a most difficult problem. The solution of this, however, is most important from a public health point of view and if not definitely included in the housing program, will discourage public health workers in trying to realize any benefits, and, it would seem, will take from the housing program most of the public health arguments used to justify it.

Present Government Housing Succeeds or Fails in Its Objectives

If the present publicly subsidized housing program is designed to help the man who has a house to live in that does not leak, has a private toilet and running water, has screens and windows, etc., but who lacks hot water or

[4] *Housing in Philadelphia*, 1935.

steam heat, plenty of yard space and grass and flowers, gas, mechanical refrigeration, and other necessities for an abundant living, at a reasonably low cost, then it has been successful in achieving that goal.

If, however, the publicly subsidized housing program was designed partly at least to improve the sanitary conditions for people living without private toilets, without running water, without screens and windows, with leaking roofs, etc., then the program to date is a partial failure.

As worked out to date, it is providing a more abundant living for the low wage earner who is able to have a decent sanitary home without many conveniences only through sacrificing, but does nothing for the man or his children who live in a dilapidated, insanitary, poorly maintained house.

Observations and Conclusions

1. The solution to the problem of providing decent and sanitary homes for the lowest income group is many sided, with poverty standing out as the prime underlying cause.

2. The contention that building houses for the middle class in order to help people in the slums is fallacious in Memphis.

3. The poorest people must of necessity live in the poorest houses and wherever the poorest people live they will sooner or later produce the poorest houses because of the inevitable lack of sufficient funds to maintain minimum requirements; conversely expressed, "any raising of the standard of existing housing must be followed by a corresponding increase in rents if the improvements are to be permanent."

4. The owners of slum dwellings maintain these dwellings under existing conditions, in general, in as sanitary and as decent a state of repair as is justified by the low rent collected.

5. The Department of Health, as the enforcement agency, can work on the top rental section of the slum dwellers, which is the same section that publicly subsidized housing projects are designed for. A cooperative program with publicly subsidized housing projects working on the lowest group and with the enforcement agencies working on the top group of slum dwellers is desirable.

6. Poverty and relief are very closely associated, but people falling in these classifications are not eligible for housing in federal housing projects and are not amenable to improvement of housing standards through enforcement. There is no agency or program now directed toward the relief of this group in the way of providing them with decent sanitary housing.

7. Eighty percent of the people on work relief and 86% of the people on direct relief live in the slums of Memphis.

8. Unless the publicly subsidized housing programs are redesigned or expanded in order to supply decent sanitary housing for people in the worst sections of the slums, the program will not enlist or deserve the continuing active support of public health departments or officials even though they will surely not oppose it.

9. If subsidized housing does not include the lowest 10%, then health departments can only attempt the impossible process of trying to educate slum dwellers to live healthfully in the slums without adequate or properly maintained sanitary facilities.

II. Railroad Abandonment in New England, 1921–37*

By CHARLES CHERINGTON†

THE first instalment of this article contained a description of the New England railroad network and the extent of abandonment to date, together with an analysis of the causes of abandonment in terms of traffic volume and the financial position of the carriers.

6. Control of Abandonment

The abandonment of almost any line of railroad involves, to a greater or less extent, the public interest. Rarely does complete cessation of service not work a certain amount of hardship on at least a small section of the shipping or traveling public. The law everywhere treats the railroads as public utilities, constantly subject to public control and supervision.

The extent of state jurisdiction and control over abandonments has been seriously curtailed since passage of the Transportation Act of 1920. This law granted to the Interstate Commerce Commission the power to exercise complete negative control over abandonment of lines engaged in interstate commerce.[43] It became unlawful to abandon any such piece of railroad without first obtaining from the Commission a certificate that public convenience and necessity permitted abandonment. At the same time negative control over new securities and railroad extensions was given to the Commission, together with a more limited power actually to order carriers in a financial position to do so to extend their lines in the public interest.

The power to control abandonment was quickly construed by the Commission and the courts to cover not only interstate railroads but also intrastate railroads engaged in interstate commerce.[44] Within that broad field the authority of the Commission has been plenary and conclusive, reducing the activities of state regulatory bodies to the lending of advice and assistance.[45] The Commission has, however, constantly consulted with state authorities; its examiners have cooperated with them[46]; and the records of joint hearings, held in the vicinity of the line in question, have been the basis for the Com-

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* For the first instalment see 14 *Journal of Land & Public Utility Economics* 40–55 (February, 1938).

† Student, Harvard University Law School. This article is the product of graduate study done under the direction of Professor Edward S. Mason, Harvard University.

[43] The Interstate Commerce Act (U.S. Code, Title 49, Chapter I), Sec. I, ¶¶18–21.

[44] *Certificate for Eastern Texas R.R.*, 65 I.C.C. 456 (1920); *Public Convenience Certificate to the S. and B.C. R.R.*, 67 I.C.C. 746 (1921); *Public Convenience Certificate to the Ocean Shore R.R.*, 67 I.C.C. 760 (1921).

[45] Early in the history of the administration of the new legislation the courts delivered a check to the Commission's broad interpretation of its own authority. In the case of the Eastern Texas Railroad, an intrastate line which had fallen on evil days, the Commission authorized a complete abandonment both as to interstate and intrastate business. This sweeping exercise of power was partly reversed in *Texas v. Eastern Texas R.R. Co.*, 258 U.S. 204 (1922). The Supreme Court of the United States held that, while the Commission had full authority to authorize abandonment by an intrastate carrier of its interstate business, it had no authority to permit its abandonment of intrastate business without consent of state authorities. But this victory of the local regulatory bodies proved to be more apparent than real. For it is a rare intrastate railroad which can live without interstate business. In the case of an intrastate branch of an interstate system the power of the I.C.C. is complete since continuance of the branch in intrastate business only would inevitably increase the extent of the financial loss to the main system and be a consequent burden upon the interstate commerce over which the Commission has such complete control. *Abandonment of Branch Line by Colorado and Southern Ry.*, 72 I.C.C. 315 (1922); 82 I.C.C. 310 (1923); 86 I.C.C. 393 (1924); 94 I.C.C. 657, 661 (1924), upheld in *Colorado v. U.S.*, 271 U.S. 173 (1926).

[46] *Annual Report*, Interstate Commerce Commission, 1921, p. 17.

mission's final decisions. Thus, the influence of state authorities has continued despite the theoretically exclusive nature of federal control.

The standards set up in the statute to guide the Commission in the exercise of its control over abandonments were vague and indefinite, capable of the most flexible interpretation.[47] In New England, as in the country as a whole, each case has been considered on its individual facts. Yet certain general principles appear. In nearly every case which has come before it the Commission has been faced with two conflicting interests. On the one hand, there is the desire of the carrier to save money by eliminating unprofitable mileage, and on the other have been the shippers and to a lesser extent the passengers who are faced with inconvenience. The problem has been to strike such a balance between these conflicting interests as will both preserve the solvency of the operating companies and at the same time protect the vague but none the less real elements which go to make up the public interest.

In striking such a balance the primary considerations are financial. The first question is whether the line is able or ever will be able in the future to meet its operating expenses. If, as is usually the case, this question is answered in the negative, the next consideration is whether the owning or operating company has sufficient revenues from other sources to enable it to continue operation of the unprofitable line without placing too heavy a burden upon interstate commerce in general. If the main system is already insolvent or is threatened with insolvency there will be, as a rule, a better chance of granting the application for permission to abandon. But because the main system is solvent, even though it may be unusually prosperous, does not preclude the abandonment, since such abandonment may enable a prosperous carrier to furnish even better service on the lines where the need for such service is greater.[49]

Financial considerations, important as they are, are not conclusive. Abandonment even of the most unprofitable line may work real and serious hardship on the communities which have grown up along it. To some industries railroad service is still absolutely essential to continued existence. The economic losses which may result to a community through abandonment may far exceed the incidental saving to the carrier involved. The Commission has given considerable weight to local protestants and especially to objections of important local industries. At the same time the Commission has pointed out to protesting interests from time to time that maintenance of the line for their benefit imposes corresponding duties and responsibilities upon them.[50] They must provide it with a reasonable amount of traffic to enable continued operation. In a few cases, to test their good faith, the Commission has turned over abandoned stretches to local interests to operate themselves, thus enabling them to enjoy continued service provided they are willing or able to pay the price for it.

In considering the needs of communities for continued operation of unprofitable mileage, the Commission has paid considerable attention, particularly in

[47] Paragraph 18 of Section I of the Interstate Commerce Act reads in part as follows: " . . . no carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

[48] *Brooks-Scanlon Co. v. R.R. Commission of La.*, 251 U.S. 396 (1920).

[49] *Abandonment by the Southern Ry.*, 145 I.C.C. 355 (1928) at pp. 360–361.

[50] *Georgia and Florida Ry. Abandonment*, 166 I.C.C. 539 (1930) at pp. 545–546.

recent years, to the alternative transportation facilities available. The actual existence or condition of the parallel highways may be treated as an important factor in weighing the public convenience, as well as the adaptability of the existing rail traffic to movement by highways. All these and many other minor considerations have figured in the decisions of the Commission in abandonment cases throughout the country.

The New England abandonment cases which have been decided by the Commission reflect these general principles. Excluding the applications which were still pending before the Commission on August 13, 1937, there have been since the passage of the Transportation Act some 81 applications to the Commission for permission to abandon about 900 miles of line. Of these 81 applications 70 were granted outright. Two more were granted in part,[51] one was granted and then revoked,[52] one was withdrawn before hearing.[53] Only seven of the applications involving about 115 miles of line have been entirely refused,[54] although two more applications involving 10 miles have been denied in part. Even these figures do not very clearly indicate the extent to which the Commission has complied with the carriers' requests. Since 1927 only one request for permission to abandon was denied and this refusal apparently was based upon a procedural mistake rather than upon the merits.[55] All other refusals to permit abandonment occurred in 1925 and 1927 and were made to the requests of a single road, the Boston & Maine. As will be seen, these refusals arose out of a very unusual situation and deserve separate treatment.

The later history of the nine pieces of line where permission to abandon was denied in whole or part is significant. Of the nine, three were subsequently totally abandoned with approval of the Commission. Two more were abandoned in part, so that of the 115 miles abandonment of which was refused only 43 miles remain in operation. With the rest of the mileage on which permission to abandon was refused, the Commission has been forced to reverse its earlier position. This is not necessarily so much an indictment of the Commission's original judgment as it is a reflection of the depression and fundamental changes in the transportation industry which have developed in the intervening period. Two particular features in the reported New England decisions are worthy of special notice. The first was the treatment accorded the Boston & Maine applications of the 1925–27 period which have already been mentioned. These applications were the outgrowth of the so-called Loring Plan and were designed to be the first move on the part of the road in its effort to strip

[51] These two applications dealt with the Essex Branch and the Reformatory Branch of the Boston & Maine. In the first the Commission permitted the abandonment of .50 miles of the 6-mile line, while in the second they permitted the abandonment of 2.60 miles of the total length of 7.00 miles. See *Proposed Abandonment by Boston & Maine R.R.*, 117 I.C.C. 691 (1927). The refusal to permit total abandonment of the Essex Branch was one of the few cases where the Commission blocked an abandonment to preserve existing passenger service.

[52] This was the Belmont Branch of the Boston & Maine. Permission was granted in *Abandonment of Branch Lines by Boston & Maine R.R.*, 105 I.C.C. 13 (1925) on November 3, 1925. It was revoked the following July (see 11 I.C.C. 524). It was finally granted again after all traffic had ceased in 1936 (see 199 I.C.C. 797).

[53] This was for the abandonment of the Newburyport Branch of the Boston & Maine. Local interests accepted a compromise in the form of a drastic reduction in service.

[54] Of these seven, six were applied for by the Boston & Maine.

[55] This was the Rumford to Oquossoc line of the Maine Central. It appears that the Maine Central's application was worded so that in effect they were not asking for abandonment as to interstate commerce at all (207 I.C.C. 97 (1935)). Next year permission to abandon was granted (217 I.C.C. 341 (1936)). This was after the flood of March, 1936 had washed out one of the principal bridges on the line.

itself of a large part of its unprofitable mileage. Such a program was regarded as startling, and the local reaction was apparently distinctly hostile. Nor was their case at that time a hopelessly weak one. On many of the branches the last fatal decline in traffic had not yet set in. For instance, the line in New Hampshire from Greenfield to Wilton still had a freight density of 40,000 tons per mile of line per year.[56] The extension of this line between Greenfield and Keene still had a density of 20,000 tons per mile. While this might have been insufficient for very profitable operation, it meant that the hardships ensuing from abandonment would be decidedly more than trifling. Some of the lines still supported a dwindling passenger traffic, and passengers, as a rule, prove vociferous objectors to abandonment proceedings.

The first Boston & Maine applications were disposed of by the Commission in 1925 in two separate decisions.[57] The New Hampshire applications in question dealt with seven branches, 93.9 miles in length, which between them were responsible for an estimated operating loss of $225,000 per year. The railroad proposed to substitute bus and truck service on all but one of the lines.[58] It pointed out that all the proposed abandonments had been built by other companies under very different conditions. It also pointed to its own critical financial position and the need of conserving its assets in order to make many needed improvements.

In answer to the road's arguments the Commission granted three of the applications but denied four, including three of the most important lines. It disputed the Boston & Maine's estimates of losses incurred and pointed out that, if the total amount of the originating revenue was credited to the branches, they would have shown in nearly every case a substantial operating surplus. At the same time it set forth in general language the nature of the compromise which it was attempting to effect:[59]

"The people of New England understand the importance to them of the Boston and Maine railroad. This railroad and the people it serves are peculiarly interdependent and in these abandonment cases there must be kept constantly in view the necessity for the preservation of as much as possible of the present mileage in the service of the greatest number of the people. The evidence seems to be conclusive that not a few of the lines which it is now proposed to abandon should never have been built. At the time of their projection as independent enterprises it seems to have been understood that some of them were built for purely competitive or strategic reasons.

"But irrespective of the origin of an existing line, people gather about it and create for themselves an interest in and a dependence upon it. Under these circumstances abandonment brings about the kind of hardships with which it is difficult to deal. The sufferers in such cases have no redress against those guilty of the original error. In some of the instant cases the extent of the hardship which would probably follow the abandonment would be very great, while in other cases it would be negligible. Differences of opinion exist with reference to the wisdom of certain features of the Boston and Maine management for decades past, but discussion of these matters is unnecessary in this connection. The important thing is the vitality of the present Boston and Maine system. Not only New Hampshire but all New England needs that system. . . ."

In denying most of the applications the Commission threw its weight on the side of the public against the immediate financial needs of the Boston & Maine. It is easy to criticize at this distance the judgment of the Commission in refusing applications, several of which it was

[56] 105 I.C.C. 13 at pp. 27–28.

[57] *Abandonment of Branch Lines by Boston & Maine R.R.*, 105 I.C.C. 13 and 105 I.C.C. 68.

[58] On the Manchester to Milford branch it was said that no substitute service was needed.

[59] 105 I.C.C. 15–22.

later forced to grant. As has been suggested, abandonment at that point was an unusual procedure. The full potentialities of highway transport had not yet become altogether clear. In fact, three of the most important applications in New Hampshire were denied at least partly on the ground that the highways were as yet unsurfaced and would consequently be impassable for heavy trucks in winter and early spring.[60] For this and other reasons it appeared unwise to the Commission at that time to permit such extensive and unprecedented cessation of railroad operations.

The second phase of the Commission's treatment of New England abandonments was the complete reversal of this earlier restraining policy during the years which followed the beginning of the depression. The stern refusals administered to the Boston & Maine were followed by nearly three years without a single application for permission to abandon. It had been made plain that abandonments would be permitted only under circumstances of serious losses and practical disappearance of traffic. Thus warned, apparently the roads gave up the idea of further applications or at least postponed them. But with the beginning of the decline in general business the financial pressure was renewed and they turned once more to abandonments as a method of preserving their solvency. First and most heavily hit were the short lines. Five of them disappeared entirely during the first three years of the depression. But soon new applications for abandonment were made by the larger systems. The Boston & Maine renewed some of its earlier applications and obtained the permissions which had previously been denied. The Maine Central also made extensive abandonments. More recently, the New Haven trustees have embarked on a program of elimination almost as ambitious as the original one of the Boston & Maine. The status of these latest New Haven applications is still uncertain, but the applications of all other roads have been granted in full. With a single technical exception already mentioned[61] the Commission has not blocked any of the moves to abandon New England lines since the depression began.

The desire to keep the systems solvent has been one important reason for the Commission's change of policy. At the same time highway competition has assumed increasingly serious proportions. The growth and improvement of such alternative facilities have had a decided effect upon the Commission's attitude. For example, in 1935 it reversed its stand of 10 years earlier and permitted abandonment of the Keene branch of the Boston & Maine. It cited as reasons not only the further decline of traffic on the line but also the intervening improvement in local highways and the service operated over them.[62]

Closely connected with the decline of traffic and the general fall in railroad revenues has been the compelling argument of deferred maintenance. Both the short lines and the main systems have not had the resources available to keep unprofitable pieces of road in anything like proper repair. For a time it may be possible to undermaintain and still operate reduced service of a sort. But there comes a point when trestles simply must be rebuilt and ties replaced if trains are to be operated at all. When that point is reached, a plain choice lies between abandonment and expenditure

[60] These were the lines from Wilton to Greenfield, from Greenfield to Keene, and from Manchester to Henniker Junction.

[61] See note 55, *supra*.

[62] *B. & M. Abandonment of Operation Keene to Coolridge Crossing*, 207 I.C.C. 56 (1935).

of large sums to rebuild a line on which all prospects of profitable operation have vanished.[63]

The Commission's control over New England abandonments thus falls into two distinct periods. In the first, the attitude of the Commission was critical and restrictive. In the second it was uniformly liberal. This does not necessarily mean that the fundamental policy of the Commission has been altered. The changes that have taken place have been changes in transportation conditions and methods. The ultimate concept of the public interest continues to motivate the decisions. If the results have been reversed, it has been in order to make them flow consistently from changing facts.

7. *Effects of Abandonment on New England Transportation Facilities*

The actual financial benefits to the principal systems as a result of abandonment are substantial, although their exact amount is uncertain. One of the most elusive of railroad accounting problems is the actual extent of losses incurred by so-called unprofitable lines. A survey made by the Brookings Institution in 1932 indicated that at that late date very few of the principal systems had approached the problem in anything like a scientific manner.[64] Theoretically, the proper method of figuring the extent of unprofitableness would seem to be to credit the branch in question with all revenue from traffic originating upon it and with all revenue from traffic moving in over it which would not otherwise have moved over the system. From this total should be deducted the actual out-of-pocket expenses incurred in hauling the traffic over other parts of the system and over the branch line itself. Because of the fundamental element of decreasing costs in railroad operations such a deduction usually will not be very large.

In practice, at least, two of the New England roads and the Interstate Commerce Commission do not appear to have followed any consistent method of analysis. In most of the earlier cases the method used was to balance transportation and maintenance expenditures on the branch line against the branch line's share of the revenues which were apparently figured on a mileage basis. The Interstate Commerce Commission sometimes reduced the estimates of loss arrived at in this matter,[65] especially when the system attempted to charge some of the overhead general expenses to the branches. At the same time there was a certain amount of justification in avoiding the theoretical methods of accounting as the only guide in several of the recent cases where prolonged under-

[63] *Annual Report*, Interstate Commerce Commission, 1935, p. 24.

[64] Harold G. Moulton and Associates, *The American Transportation Problem* (Washington: Brookings Institution, 1933), pp. 147–178. This survey of obsolescent lines was made as part of the report prepared for the National Transportation Committee in 1932. In attempting to estimate the mileage which might be abandoned in the interests of transport efficiency, two different approaches were employed. One was to compile the total mileage on which the freight traffic density was less than 100,000 ton-miles per year per mile of line. This figure was tentatively selected as the normal bottom limit of economic operation. The total mileage arrived at by that method was approximately 40,000 miles of line. The second method was to inquire of the managements of 36 of the principal systems what uneconomic mileage was included in their operating totals. After careful adjustments for uncanvassed companies the total arrived at by this method was only 7,900 miles. The marked discrepancy between these two figures was explained by the peculiar value to individual systems of some light-traffic lines and by the natural conservatism of railroad managements in admitting the existence of worthless properties in their systems. In conclusion, the survey stated that at least a substantial proportion of the larger estimate continued in operation at the expense of the railroad network as a whole.

[65] This was particularly true in the applications of the Boston & Maine in 1925 and 1927. *Abandonment of Branch Lines by the Boston & Maine*, 105 I.C.C. 13, 68 (1925); *Proposed Abandonment by the Boston & Maine R.R.*, 117 I.C.C. 691 (1927).

maintenance, unaccounted for and unprovided for, necessitated immediate capital outlays. These capital expenditures presented a new and serious element.

Probably even if the theoretically more accurate methods of figuring costs had been employed the great majority of the lines abandoned would be shown to have been operating at a loss. Existence of these losses was in most cases all too apparent even where their exact amounts were unscientifically arrived at. Obviously, a line which did practically no business could not be credited with much revenue no matter what accounting methods were employed.[66] On 15 of the 71 abandonments involving 197 miles of line estimates of operating deficits totalled approximately $475,000. If these 15 cases were at all typical, then we can estimate the total operating deficits of all abandoned lines at more than $2,000,000. Of course, actual savings effected by abandonment were not as great as this, but such savings might reasonably be estimated in the neighborhood of $1,000,000 a year. The bulk of this saving was available for the Boston & Maine and Maine Central fixed charges and must be given considerable credit for their continued ability to meet fixed charges throughout the desperately critical years of the depression.

The establishment of highway subsidiaries proceeded in advance of abandonment.[67] Their development was not, however, so much a result of unprofitable rail operations as a move on the part of rail carriers to meet the competition of local trucking and bus interests on their own ground in those fields where highway competition had the distinct competitive advantage. These highway subsidiaries have spread out until they cover all New England, operating not only over routes of abandoned railroad lines but also in many cases parallel to railroads which still maintain active service.[68] Together with their innumerable private competitors they constitute the most important change in New England transportation during the past 16 years. The density of traffic cannot as yet compare with that of the railroads, but they have none the less made themselves an integral part of the network.

Five of the principal systems have such highway subsidiaries in operation.[69] The two oldest and largest are the New England Transportation Company (owned by the New Haven) and the Boston & Maine Transportation Company. The subsidiaries have not always operated at a profit. But it can be convincingly argued that what losses have been incurred have been less than if branch lines were kept open or through traffic permitted to pass into the hands of private highway carriers. Also, it is to be remembered that competition among highway carriers has been so keen during the period of development that probably very few of them have shown a profit under any accurate system of accounting.

[66] Out of 71 abandoned lines there were only seven where the freight traffic density for the year preceding application for abandonment was greater than 1,000 tons per mile of line. Even if one does not regard the bottom level of 100,000 tons per mile set by the Brookings Institution estimate as the limit of profitable operation, as an accurate test, it is clear that a level only 1% of that offers not the slightest prospect of operating profit under any system of accounting. Practically all the lines showed a steady falling off in traffic density over a period of years.

[67] The Boston & Maine Transportation Company was established in 1924; the New England Transportation Company in 1925.

[68] Between Boston and Portland, for example, the Boston & Maine Transportation Company operates 11 busses a day in each direction while the Boston & Maine R.R. runs only 10 trains. The number of passengers traveling by rail is, however, decidedly greater.

[69] Aside from the two principal subsidiaries already mentioned, there is the Maine Central Transportation Company, the Bangor & Aroostook Transportation Company, and the Rutland Transportation Company.

The development of particular highway transport lines sometimes preceded, sometimes coincided with, railroad abandonments. The net effect seems to have been a distinct improvement in the transportation service offered to the public. Leaving out of account highway facilities not owned by a railroad, we still find that a majority of rail abandonments did not leave the public without substitute service. In several instances this substitute passenger service is both more frequent and quicker than the abandoned rail service. In the matter of freight facilities the improvement is even more marked since the highway trucks which have taken the place of freight deliveries three times per week are not only more frequent but also in many cases provide pick-up and delivery facilities, more convenient hours of collection, and other advantages which the shipper could never have obtained under the old branch-line service.

On the other hand, in a few isolated instances real hardships have been suffered by individuals and groups as a result of abandonment. Small industries which receive a weekly carload of coal have sometimes had to pay substantially higher freight charges when it became necessary to truck it in from the nearest station on the main line.[70] These increased costs have in some cases had a decided effect on their competitive positions. Perhaps even more serious has been the abandonment in Maine of at least one line where for long stretches there were no alternative highway facilities in existence and the only way in and out was by rail.[71] In this particular case the road was abandoned on the express understanding that owners of logging and summer camps along it could use it for moving passengers and supplies by handcar for as long as they cared to maintain the track in condition. In every case the Interstate Commerce Commission has been unusually solicitous of the individual sufferer and in at least one case has refused permission to abandon for almost the sole benefit of a single substantial shipper.[72]

One solution of the conflict between local convenience and financial necessity has already been mentioned but deserves further attention. This solution is the detaching of isolated stretches of line and their operation by local interests or other systems. Its adoption has been limited to the three systems and its success has varied in individual cases. Because of the nature of the original New England consolidations it has been simple to effect such detachments. Under the threat of bankruptcy of the main system or because of the expiration of leases, short lines are merely turned back to their stockholders to operate. Always the detachment follows a prolonged period of substantial losses under the system management. In this way the Boston & Maine disposed of four lines totaling nearly 270 miles. One line, from Woodsville to Sherbrooke, was leased partly to the Canadian Pacific and partly to the Quebec Central. Three others have been turned over to local interests. The savings to the Boston & Maine were very considerable, and strange to say the short lines have fared very much better since the detachment. The St. Johnsbury & Lake Champlain, for example, had lost $50,000 a year under Boston & Maine management. Its local operators promptly reduced un-

[70] J. M. Herring, *The Problem of Weak Railroads* (Philadelphia: University of Pennsylvania Press, 1929), p. 135. Low-grade carload freight moving by highway soon encounters economic limitations. This was especially true during the early years of highway transport when both highways and trucks were inferior. More recently low-grade freight movements by truck have increased.

[71] *Maine Central Railroad Abandonment*, 193 I.C.C. 117 (1933).

[72] *Proposed Abandonment by Boston & Maine R.R.*, 117 I.C.C. 691 (1927).

necessary service, slashed operating costs, kept up traffic by appeals to local sentiment, and now show a regular operating profit.[73] They have also been able to go beyond this and pay off some of the notes given to the Boston & Maine for losses incurred under Boston & Maine management. In the same way the Montpelier & Wells River has met its operating charges during better years and has actually paid dividends to the Boston & Maine on stock still owned by that system. The record of the Suncook Valley R.R. has been less successful, but at least it has been able to continue operations, serving the public along its line for years after the Boston & Maine would probably have attempted to abandon operations.

Two other systems, the Central Vermont and the Maine Central, have effected one and three such detachments respectively.[74] Two of the four short lines suspended operations because of lack of funds shortly after being returned to their owners. A third, having gone through receivership, continues to operate at a small loss, while the fourth has succeeded in showing a profit. The ability of short lines to fare better under local management seems to be partly attributable to increased local pride and consequent support, partly to decreased operating costs. In more than one case local operation has meant a decrease in the wage scale from the standard rates of the National Brotherhoods to something more nearly commensurate with the general wage level in the communities along the line. It is impossible to tell what further detachments will take place in efforts to save isolated lines from abandonment. The economies to be achieved by small-scale operation are probably limited to remote districts and peculiar conditions. But the savings effected have made a substantial impression on railroad managements. The present proposal to detach the Old Colony railroad from the New Haven system, although it seems to arise largely from the conflicting interests of different creditors, may continue on a large scale the movement which until now has been limited to short lines.[75]

8. The Future of Abandonments in New England

With 840 miles already abandoned and applications for 117 more under consideration, the future of the tendency is not in doubt. Several thousand miles of light-traffic lines still remain in New England. It might seem natural to assume that abandonments would continue until these lines were finally eliminated, but before arriving at that conclusion several factors must be considered. First, it would seem that the inroads of highway competition which led to so many of the abandonments already effected are likely to diminish gradually in intensity in the next 10 years. This does not mean that highway traffic will decrease. On the contrary, it is likely to continue to increase, although at a somewhat slower pace. But the com-

[73] *Biennial Reports*, Vermont Pub. Serv. Com., 1930, 1932, 1934.

[74] The Central Vermont detached the West River R.R. in 1930 (*Abandonment by Central Vermont R.R.*, 166 I.C.C. 517(1930)). Private interests resumed operation in 1931 and managed to keep it going most of the time until 1934. But undermaintenance caused by inadequate revenues made the line unsafe for further operations and permission was finally granted for total abandonment (*West River R.R. Company et al. Abandonment*, 212 I.C.C. 175 (1936)). The Maine Central detached the Wiscasset, Waterville & Farmington R.R. which later was abandoned (*Wiscasset, Waterville & Farmington Abandonment*, 166 I.C.C. 616 (1930)). It also retired from its interest in what is now the Bridgton & Harrison R.R. which continues operation at a small loss; and from the Belfast & Moosehead R.R., which in 1935 showed an operating profit under private control. All three of these lines were narrow gauge and their connection with the Maine Central had always been more or less tenuous.

[75] *New York Times*, May 6, 1937, p. 37: 6.

petitive advantage which highway transport enjoyed over transport by rail has been largely exploited and exhausted by the traffic already taken from the railroads. From now on we may even expect a slight movement in the other direction.

This leads to a consideration of the second factor, the possible improvement in rail service on light-traffic rail lines.[76] Such improvements have been suggested by the Federal Coordinator in several of his reports. They include adoption of lighter and more flexible equipment combined with the rendering of frequent and economical service.[77] For example, it has been suggested that substantial savings could be effected by use of light gasoline engines and rail motor cars.[78] The latter development has already taken place to a certain extent. But there seems to be room for still further use, perhaps to the extent of the adoption of multiple-unit operation for most local and commuter passenger service.

The extent of these technical improvements will depend in turn upon the attitude by system managements. Will they make any substantial effort to save the light-traffic lines by reviving business through such expedients, or have they already secretly given up the fight? Since the pressure of outraged public opinion wrecked the Loring program of abandonments on the Boston & Maine, the managements have been exceedingly wary of any sweeping announcements on this subject. The intensity of local wrath might easily upset the most carefully worked out scheme if the full details were disclosed too fully or too soon. Certainly the present applications of the New Haven provide a significant straw in the wind. The hints of financial writers indicate that more applications are to come in the near future. As to the other systems, it is well to remember that the original Loring program is little more than half accomplished. Since it was first announced the density of traffic on the lines in question has seriously declined. Lastly, the present condition of at least three or four of the short lines does not give much promise of their long-continued existence.

In the last analysis the future of railroad abandonments in the region depends upon the trend of the relative efficiency of the two competing forms of transport (rail and highway), combined with the more uncertain element of the policies of various managements. One thing is certain, the trend toward abandonments which set in 15 years ago has by no means come to an end. The only real question is how long and how far it will continue. Whatever the answer to that question may be, the changes which are being wrought in New England transport will continue for at least the decade to come.

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[76] Stuart Daggett, "Our Changing Transportation System," *American Economic Review*, Vol. 22, Supplement, p. 259; "In contrast with the flexibility of industry, the railroad has been slow to use new devices . . . . I do not suppose that the statement is susceptible of proof, but I associate the present plight of the railroads with their failure to capture their fair share of the brains of the past three or four business generations. It is likely enough that the railroad managements assented more readily to seniority rules because they counted on the protection inherent in a regime of limited monopoly; but if this is the case the motor vehicle has stripped them of their shield."

[77] *Passenger Traffic Report*, Federal Coordinator of Transportation, 1935, pp. 77–94. It was suggested that where passenger traffic averaged less than 20 passengers per train the only economic solution was to put on busses. Where the traffic was only slightly denser, the rail motor car would be the solution, perhaps combined with an inexpensive package-freight service. At present, motor trains operate at about ½ of cost but this is because the railroads have put them on lines which cannot support any kind of rail passenger service. It would be better to use busses where the roads now use rail cars, putting the rail cars on instead of the present local steam trains.

[78] *Freight Traffic Report*, Vol. I, Federal Coordinator of Transportation, 1935, p. 83. Much of the present branch-line service is rendered by engines too large for the traffic, too costly to operate.

Urban Land Department

MORTON BODFISH, *Editor*

Disparities in Land Values

THIS paper is designed to suggest the hypothesis that sufficient eruptions appear upon the face of uniform land uses to warrant a qualification of the *principle of uniformity* of land values—the bulwark of land-value assessment systems. The problem arises from the practice of substituting known value-indexes of given land parcels for seemingly similar parcels of land by comparison and summation appraisals, and from the assumption of a *highest and best use* made in an income appraisal.

Suburban Cook County—Truck Farm or Subdivision. These brief remarks do not offer extended documentation with illustrative cases, but three examples will be set forth. The execution of the reassessment of 1928 in Cook County, Illinois, gave that community its first experience with a wholesale public appraisal system predicated upon actual indexes of value.

The reassessment found two broad competing uses for the area in suburban Cook County—truck farms and subdivisions. Some truck farms had been transformed into legitimate subdivisions and others into "chump-chariot" subdivisions, and the halo or stigma thereof hung heavily over the areas still devoted to raising onions and cabbages. The market prices of farms for subdivisions were imputed, with some gradation, to the farms which remained.

In Cook County, outside of Chicago, there were 240,000 acres of unsubdivided land and 486,637 subdivided lots with a vacancy of 69% in 1928. Chicago itself had a 30% vacancy in a total of 741,000 parcels of land. Without increasing the 1928 density of population, the 1928 vacancies would care for an increase of 2,631,285 persons. (The 1930 population was 3,982,123.) The vacant lots outside Chicago in Cook County would absorb an increase of some 1,250,000 persons.

The Chicago Regional Planning Association's forecast of population growth in the County area outside Chicago indicated that an increase of some 971,000 could be expected between 1928 and 1960. *Vacant subdivision areas in 1928 would accommodate 121,000 more persons than were expected by 1960*, after adjustments were made for parks, playgrounds, etc.[1]

By using the principle of uniformity and imputing value-indexes from transferred areas to those not transferred, fictitious value estimates were the original results.

Monumental Skylines. Going from the extreme of suburban subdivisions and truck gardens to the acme of central urban developments, one will find "Radio Cities," "Empire States," "Merchandise Marts," "Terminal Towers" and all they exemplify, breaking up the uniform possibilities of land use.

The gigantic Marshall Field Merchandise Mart in Chicago opened to occupancy in 1930 some 92 acres (gross area) of space. There was in Chicago in 1930 a wholesale district of 20 blocks and 149 buildings with less than three times as much area as that in the one new wholesale building.

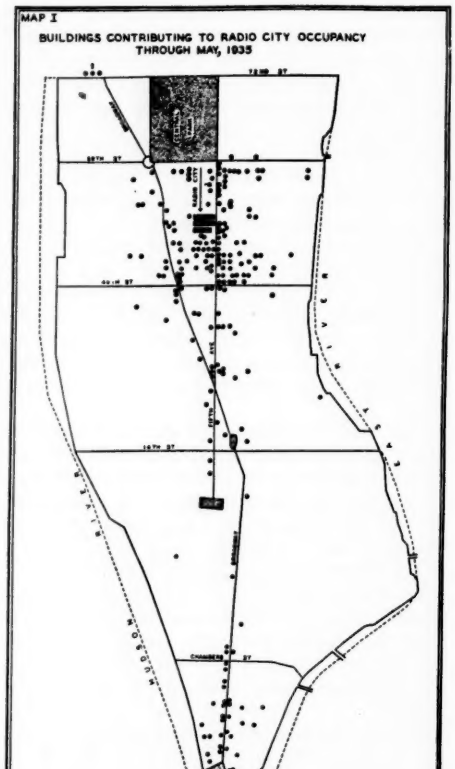
In the spring of 1932 the Mart had 375 tenants who had left some other building in Chicago. Of that total, 165 or 44% entered the Mart from the wholesale district. The manufacturers and wholesalers of wearing apparel were heavy users of space in the wholesale district and in that spring 18¾% of all such firms were located in the Merchandise Mart.[2] The Merchandise Mart is one example singled out here because it got in the path of a land utilization survey.

New York's Radio City also presents a case in point. That city-within-a-city presents tangible evidence of architectural and engineering skill ranging from its towering observation porch to Prometheus in his fountain abode on the sunken plaza. The control and accommodation of vertical and horizontal traffic permit a superintensive use of physical land area. An intangible spirit in the entire plan puts to shame those subdividers of space who work in a level plane. But whence come the tenants?

[1] Simpson, Herbert D. and Burton, John E., *Valuation of Vacant Land in Suburban Areas* (Chicago: Institute for Economic Research, 1931).

[2] Burton, John E., "Changing Land and Building Values in the Chicago Wholesale District," *Skyscraper Management*, January, 1933.

In May, 1935, an exploration of untold numbers of corridors produced a list of 364 occupants who were traced to a previous location in Manhattan. They came from the 206 buildings plotted on Map I.



At the time the tenancy was studied, 31 buildings in the downtown office area (below Chambers Street) had contributed to Radio City's occupancy. Between Chambers Street and 40th Street 47 buildings had been drawn upon, but above 40th Street and below 59th Street 123 buildings had played host to "Radio City tenant" vacancies. It would have been more accurate to have measured the migration in terms of floor space deserted rather than in terms of tenants or the contributing buildings, but that was a virtually impossible task.

Variable Levels of Use as Neighbors. These three cases are not isolated exceptions in land utilization but rather present upper and lower limits of varying degrees of intensiveness. Many lines of thought may flow from them: Is there sufficient public interest involved to call for tighter regulation of land uses? To what extent can the heavy forces of obsolescence be measured and allocated to properties involved? Should the *principle of uniformity* be qualified to encompass high and low land uses as neighbors? Notwithstanding the importance of regulation and obsolescence, these remarks are directed to the latter question.

Where "underimprovement" and "overimprovement" uses mingle within any given area which once presented uniform possibilities and some degree of stability pegs those high and low uses, it is difficult to escape the conclusion that variations in land values should exist. A taxpayer may be a highest and best use, but it will be a taxpayer as long as its land is held at a value supportable by a skyscraper. Concentrations of suburban homes may justifiably be separated by truck gardens which will not support land values imputed from subdivisions.

Assume that a district of a given area of land, uniformly utilized to a highest and best use, supports a given number of 8-story buildings. The floor space in the district is the supply balancing an effective demand for such space. With an increase of the demand, and often without, there are changes in the structural complexion of the district and a 30-story building appears. The tendency has been for that new higher use to color the entire district even though the building involved might have provided more than enough extra space for the increased demand. The problem is usually more involved and an 8-story district breaks out with new 15's, 20's, 30's, etc., and land-value hopes are directed to the physically higher uses. When the district settles down to "normalcy," it may be found that the buildings ranging in height from 8 to 30 floors present a supply in balance with demand, and if that demand does not increase it may be found further that 8-story land values will abut upon 30-story land values with consistency.

In general, buildings regulate the uses to which urban land is put and once land and building are united they are bedfellows for many years. If land uses, evidenced by land's buildings, are not uniformly developed, eco-

nomic land values cannot be uniform. If demand can be spread uniformly over a district, land values can be uniform, but if the same demand fund is piled 60 stories high on one parcel, 50 on another, 40 on another, and 10 on many other parcels, it is difficult to accept a uniformity of land value.

If land-use expansions, horizontal or vertical, lead to an oversupply, actual aggregate value losses may result. An overexpansion, successful to itself, will feed upon established values, and an unsuccessful expansion will burn up its own value possibilities. Land united with an improvement so tall or large as to be a white elephant will be of less value than if it were improved with a more lowly structure or not improved at all.

An approach to the age of static population should lend some stability to land uses and emphasize the tendency of "robbing Peter to pay Paul" in land-use expansions. A principle of a *disparity of land values* may come to fit the facts of land uses even in distinctions finer than the rough levels of broad use-district classifications. The tendency to destroy uniform land-use possibilities is not confined to great cities but can be found in small cities as well, since the crossing of two roads makes four corner parcels.

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Amendments to Title II of the National Housing Act*

THE recent amendments to the National Housing Act have caused a great increase in activity in the Federal Housing Administration's offices. Most of the offices have been deluged with questions about and applications for mutual mortgage insurance. The widespread publicity given in the press to the insurance of 90% loans, while the amendments were being considered by Congress, is partly responsible for this increased activity. Many people who are not fully informed about the provisions of this particular amendment are asking a great many unnecessary questions. They do not seem to understand that the 90% loan applies only to new construction and can under no circumstances exceed $5,400. In addition to the activity in the FHA's offices, the approved mortgagees are very busy answering questions about the 90% loan provisions. Time, of course, will remedy this situation.

The reduction in the total maximum cost to borrowers under the new amendments has been a boon to business. Under the original Housing Act the cost to the borrower—depending on the maturity of the loan, etc.—approximated 6.3%; whereas under the new amendments the total maximum cost to the borrower is slightly more than 5.5%. The 5.5% cost more nearly meets the competitive market.

Not only are borrowers more eager to give mortgages to be insured by the FHA, but approved mortgagees are more willing to recommend loans of this type. Under the old Act it was sometimes difficult for a conscientious approved mortgagee to recommend an FHA insured mortgage when it knew that the total cost to the borrower was somewhat in excess of the going costs for mortgage money under other conditions.

Another reason that may be given for the increased activity in FHA insured mortgages is the present business recession. Some of the mortgage houses were becoming a bit anxious about what the future may bring in the way of delinquency, foreclosure, etc. Under such conditions there is a greater tendency toward insistence on insurance of mortgages. While in general, at the present time, there is very little delinquency in mortgage loans, it is apparent that, if the recession were to go far enough and throw a large enough number of people out of employment, delinquency would be sure to follow.

In addition to the material increase under Section 203 of Title II of the National Housing Act, a large amount of effort is being expended in connection with Sections 207 and 210, which deal with the larger projects. Millions on millions of dollars worth of this type of operation are being considered in the minds of various and sundry owners and promoters. The inactivity along these lines for so many years, plus the chance to get what they think is easy money through

* This discussion does not include Title I, which was recently reinstated and amended. The activity under Title I, we are informed, is considerably less than it was a year ago. It seems that general conditions do not prompt owners to apply for modernization loans of the type that approved lending institutions will accept.

the insured mortgage route, has prompted these thoughts. There seems to be no question in the minds of FHA officials and others who are thinking about these projects that a very large percentage of them will never go farther than the conversational state. A large number of these projects, even if approved by the FHA and if loans could be obtained, could never be consummated, because the equity capital seems to be somewhat conspicuously absent. This is not surprising in view of the fact that very few projects of this kind are being undertaken under other conditions.

In many of our communities large projects cannot be appraised for as much as the cost of production. In other words, rentals obtainable in the market are not high enough to justify multiple housing construction. In Chicago, for instance, it is necessary to obtain a rental of approximately $15 per room per month in order to have the project sound in the eyes of the FHA. It is generally known that rentals on the average do not exceed $12 or $13 per room per month in the so-called medium-priced multiple-family structures. It is not surprising, therefore, that the investing public is not particularly interested in this type of investment.

In a recent announcement by the Chicago Mortgage Bankers Association, a warning was sounded that any projects undertaken under Sections 207 and 210 should be on only the most desirable locations—meaning, of course, that, since land value is a small part of the total cost and it costs no more to build structures on good locations than on poor ones, the chances of obtaining rentals necessary to make the projects sound are greater if the most desirable sites are used.

The FHA is doing everything in its power to have sound projects and at the same time stimulate building activity, which, after all, was the main purpose of the amendments to the National Housing Act. Some of the FHA officials, however, are frank to admit that it is exceedingly difficult to find such projects under existing conditions. If there is an ample amount of equity financing, perhaps a mortgage can be obtained which the FHA will insure, but in many cases this does not come up to 80% of the cost of land and buildings.

The work of the FHA up to this time has been commendable. Some there are who believe that the Administration is insuring a large number of mortgages that are unsound. Anyone who has had actual experience with the methods employed, however, cannot concur in such thoughts. While there is no general agreement that 80 and 90% mortgages are sound, the mortgages that the FHA insures are at least sound if the borrower does not have any unusual setbacks and the appraisal of the value is proper. The FHA makes a very careful investigation of borrowers' ability and willingness to meet obligations and uses every known method and approach in appraising the value of the property that secures the payment of the insured mortgages. The fact that until very recently the FHA had, in the entire country, acquired only 106 properties is a fairly good indication that it is doing a good job. This showing is even better when one considers that mistakes must necessarily be made in launching a gigantic program. Anyone who has attempted to set up a nation-wide organization in a comparatively short period of time is well aware of the mistakes which can be made in the selection of competent honest personnel who must interpret instructions necessarily flexible to meet conditions in every community. It is well known that some of the acquisitions are the results of such mistakes, which will not perhaps occur again.

All in all, the experience so far under Section 203 seems to lend confidence in the FHA's mutual mortgage insurance plan. The desire to stimulate the construction industry under Sections 207 and 210 of Title II may lead to some unsound projects. Time alone will tell. A general decline in rentals (which most people do not expect) will necessarily cause some embarrassment. If rentals continue to increase and remain at a higher level for a considerable length of time, the results may be better than even the optimists anticipate.

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Chicago's Housing Congress

MOST of the cities of the United States have become blight and slum conscious during the last few years. In Chicago active recognition of these problems has until recently been confined to a relatively few individuals and unofficial groups. At last,

however, it appears that official Chicago has begun to awaken to a realization of the enormity of its land problems.

As the first important manifestation of this awakening, a conference on housing was held in the Council Chambers during the month of February by the Committee on Housing of the City Council. The so-called "Housing Congress," which met in 12 sessions over a period of nearly two weeks, developed a vast amount of stimulating discussion. Unquestionably it helped clarify a number of problems, perplexing to the Committee as well as to the numerous members of the public attending.

Leading up to this conference were events in 1937. In the spring of 1937 a great deal of publicity was given to the proposed increases in rents and to unsanitary conditions existing particularly in the Negro areas. A special committee was appointed at that time to go into these questions. After a number of turbulent hearings in which the housing needs of the Negroes were emphasized, this special committee in its report to the City Council recommended:

1. That a comprehensive land-use survey and real property inventory be made;
2. That the building code be amended as rapidly as possible to permit the use of less expensive materials and methods of construction; and
3. That the PWA Housing Division quickly complete the three projects in Chicago which were under way and begin working on the project in the Negro area.

On the basis of the recommendations made, the Chicago Plan Commission asked the City Council for an increased appropriation for 1938 to enable it to make the land-use survey. Although the WPA had indicated its willingness to furnish an estimated $750,000 to carry out the major part of the work, an additional $60,000 would be needed by the Plan Commission for expenses of supervision. Despite a good deal of support for the project from civic groups, no provision was made in the 1938 budget for the additional appropriation.

In January, 1938 the Mayor appointed a Committee on Housing as a standing committee of the City Council. The formation of the Committee was attributable to the recognition of the following problems:

1. Under the United States Housing Act of 1937 it was expected that some $20,000,000 to $30,000,000 would be allocated to Chicago. Before the funds would be available, however, it would be necessary to secure enabling legislation and to take other steps necessary to make the contribution required of the local government under the Act;
2. Amendments to the National Housing Act were then under discussion. It was realized that large areas of the city could not expect an increase in residential building activities under these amendments because of the blighted condition which precluded the FHA from insuring mortgages in these districts;
3. Residential building in Chicago in 1937 was still less than 3% of the building activity at the peak in 1926.

The members of the Committee on Housing believed that it would be desirable to make possible a full discussion of the various problems involved in a stimulation of residential building activities and conceived of the idea of a "Congress." Gael Sullivan, associate director of the FHA in Chicago who acted as consultant to the Committee, suggested that the Committee try to develop in these hearings a two-fold program: one upon which immediate action should be taken, and another designed to be carried out on a long-term basis. It was believed that the Committee would be in a better position after the hearings to formulate definite recommendations.

The hearings began February 17 with a discussion of the purpose and value of a land-use survey and real property inventory, and ended on February 25 with a presentation of the need for education in housing and city planning. Other subjects discussed were rezoning of Chicago, the building code, rehabilitation of blighted areas, city planning, building costs, large-scale private housing, large-scale public housing, mortgage financing, foreclosure laws, taxation, and federal, state, and municipal housing legislation. About 40 persons spoke, representing, among others, the United States Housing Authority and the Chicago Plan Commission. The speakers included real estate men, mortgage bankers, employers, labor, and representatives of civic groups. In nearly every session the need for effective rezoning of Chicago was emphasized, as well as the importance of making a land-use survey and real property inventory to serve as a basis for rezoning and for all planning and housing activities. It was also pointed out that the Chicago Plan Commission in its present set-up could not function as effectively as was desirable, and a resolution was intro-

duced by Alderman Egan designed to strengthen the Commission. There was uniform agreement that the building code should be rewritten immediately in order to make lower costs of construction possible.

The question of taxation, particularly tax delinquency, created a great deal of interest. The attention of the Committee was called to the inflated costs of much of the available land in the City, and the accumulation of delinquent taxes in excess of land values. Recommendations were made for freeing this land for profitable use and many hoped that this problem would receive early consideration by the Committee. Effective pleas were also made for revision of the mortgage foreclosure laws of the State of Illinois. Those speaking on this subject expressed the belief that a reduction in the cost of acquiring title by foreclosure would result in an increased supply of mortgage credit available at favorable rates of interest.

Through these 12 sessions the aldermen listened with a great deal of interest and, it sometimes seemed, with a great deal of patience. They should be complimented on maintaining their interest during the many technical arguments about zoning, building conditions, taxation, public housing, and incidentally, on birth rates and birth control. Many of the technical discussions meant little to the aldermen to whom nearly all of these problems were new.

While in the beginning some of those attending appeared to fear that the hearings were designed as an insincere political gesture, this feeling was largely eliminated as the hearings progressed. The chairman, Alderman Rowan, conducted the meetings in a manner bespeaking an earnest desire to obtain better housing conditions in Chicago. Each speaker was given full opportunity to develop his point, despite the fact that a good deal of criticism was directed against the city administration by some of the speakers, as the following quotation from one well illustrates:

> "If we find that the present machinery of government cannot cure the forces of blight that are its responsibility, then the citizens of this city will be forced by economic necessity to scrap the old and establish a new form of municipal administration."

It does not seem possible at this time to estimate the value of the hearings. Two conclusions, however, can be drawn now. One is that the aldermen who participated in the hearings learned that there is no one panacea which will solve the housing problem. The other is that they were made more aware, as members of the City Council, of their obligation to formulate and carry out orderly plans which will help make possible improved housing conditions and a revival of residential building in Chicago. The Committee had expected that out of these hearings would come a ready-made program of action which could be prepared and carried into effect without great difficulty. Unfortunately, however, thus far the Committee has not even made an attempt to adopt a program which could be recommended for immediate action.

The real stimulation for action will be the availability of loans and grants to the Chicago Housing Authority by the United States Housing Authority, if and when necessary action is taken by the General Assembly of Illinois and by the City Council of Chicago. The demand for action will continue to grow as Chicago realizes that it faces continuous decay unless proper steps are taken in a number of directions to remedy existing conditions.

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Mobility and Farm Tenancy

THAT the agricultural ladder functions incompletely among farmers in certain areas is substantiated in studies made by the writer in Pickens County, South Carolina, and in eight other counties in the same State.[1] In these investigations it was found that tenancy is a stepping-stone to ownership for the sons and daughters of owner farmers, but not for the sons and daughters of tenant farmers. In other words, among some 2,000 farm families included in these studies, a fairly high proportion of children of owner farmers began their careers as tenant farmers, or as wives of tenant farmers, and later on in life became owners of farms. But in only a very few cases did children of tenant farmers start as tenants and later in life become farm owners. It would appear from these data that "once a tenant, always a tenant" applies to children of tenant farmers included in these investigations, but that the phrase does not apply to the offspring of farm owners.

In the Pickens County study it was found that not one son or daughter of a tenant farmer (76 families) had graduated from college. Among the owner farmers (224 families) approximately ¼ had children who had graduated from college. Subsequent investigation has revealed that no children of tenant farmers in the County have gone through to graduation in college. This is based on careful inquiry (Pickens County being the native home of the writer) among people best qualified to supply such information.

This paper does not presume to give a factual presentation of mobility and farm tenancy, but rather an interpretation of some ideas growing out of the experience of the writer in making a number of investigations and in studying the materials published in this field in recent years. The literature pertaining to this subject has become quite voluminous, and has been analyzed in varied manner by different writers. One could, at present, produce a large quantity of facts by reference to the original studies. There is a place, however, for the interpretation of such factual evidence, with the risk that different writers may deduce different conclusions. Since the appointment of the President's Farm Tenancy Committee, and in consequence of the agitation growing out of national tenancy legislation, there have developed confusing statements of the problem in many of its forms. That farm tenancy *per se* is an unmitigated evil has gained ground in some circles in the recent past. While the system does undoubtedly have many faults and is in need of searching analysis, yet the fact remains that tenancy offers a way up for certain groups in the higher and middle economic brackets of agriculture. It is not necessarily abolition of tenancy that needs to be contemplated, but renovation and overhauling. One of its worst faults is the excessive mobility of tenants.

In the South Carolina studies it was found that about ¼ of the farm tenants move every year, on the average.[2] Owners move only about ⅛ as often, on the average, as do tenants. The writer has established the thesis, and has presented some evidence to substantiate it, that mobility in the farming occupation is closely associated with the socio-economic status of the farmers.[3] This means that, as one ascends the scale of socio-economic well-being, the moving about or change of farm decreases, and vice-versa. The major premise of this contention is that excessive interfarm mobility leads to failure, and that no farmer can keep "on the move" and succeed in his occupational pursuits, judged by whatever standards of achievement one may wish to select.

This comes about very logically, when one stops to think of the nature of farming as a mode of life. There may be many occupational pursuits in which frequent interchange

[1] B. O. Williams, unpublished data of the South Carolina Experiment Station, Clemson College, Clemson, S.C. These data will be published at an early date by this Station.

[2] See *Fiftieth Annual Report*, S.C. Exper. Sta., December, 1937, p. 16.

[3] B. O. Williams, "Occupational Mobility among Farmers," *Bulletin* 296, S.C. Exper. Sta., June, 1934, pp. 16ff.

of residence would be no handicap, and, in fact, some in which it would be an advantage, as for instance, officers in the Army, circus employees during the operating season, etc. But the very nature of farming is such that, in order to succeed in it, the farmer must "stay put." Each farm has its peculiar soil problems and idiosyncrasies; each farm, in the Cotton Belt at least, has unique fertilizer and liming needs, and so on throughout a list of specialized problems. These highly specialized features of farming often become the limiting factors in coaxing a modest living from the soil, and a knowledge of them is necessary. One often hears a farmer refer to the fact that it has taken him many years to become acquainted with the poor and good spots of his lands. Farming is a highly specialized enterprise—much more so than has been commonly suspected.

Among those farmers who move excessively, the lack of intimate knowledge of the peculiar and specialized properties of the soil is by no means the only reason which retards successful achievement in farming; there are, in fact, many other reasons. Some of these are: (1) the mobile farmer will not, in all probability, build fences, construct drains and terraces, sow perennial grasses, and turn under cover crops to conserve and build up the soil; (2) the constantly moving farmer will not put out and care for fruit trees, or other long-lived vegetation, such as forest settings, pecans, flowers, etc.; (3) live stock will probably not be included as a major source of income in the program of the roving farmer, for live stock are difficult to move about, and they require, frequently, a long time before they yield an income; (4) it will probably be difficult for the farmer who is always changing farms to obtain adequate credit resources, because he does not establish a line of credit and his transitory program does not fit into an appraisal of future paying power; and, finally, (5) the farmer who changes residence frequently will not identify himself, or his family, with the local institutions and agencies of community life. This means that excessive mobility is a social as well as an individual problem.

The foregoing matters, with the exception of the fifth, are intimately tied up with, and are peculiarly interwoven into, the very lifeblood of successful farming. It is hardly logical to expect a mobile farmer to be able to compensate for these handicaps, either by extra ability or diligent effort. They are extreme resistances that must be overcome, and they generally pull the farmer down and he becomes a nomadic misfit in any sound agricultural program.

This is not to say that all farm moving is harmful, for such is not the case. In early life, while getting settled and while making adjustments to the size and type of farm suited to him, the farmer may do some moving to good advantage. As a matter of fact, many of the most successful farmers have done just that. But continuous, excessive moving throughout life of the tenant farmer, especially, thwarts the doing of those things which make for provident farming and an adequate standard of living.

When the complexities of the farming problem, especially of the South, are untangled, and the net residues analyzed, it would not be at all surprising if the tremendous interfarm mobility should turn out to be a bed-rock factor in the limitation of success in the enterprise. Some method should, if the above reasoning is sound, be devised that would lessen the impact of this continuous shifting of residence on the part of farmers.

What the farmers of this country need is a good leasing system that will enable those who rent land to obtain greater stability, and with that a greater economic and social security.

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Recent Developments in Tenancy Programs in North Carolina

THE rural-rehabilitation, supervised-loan program of the Farm Security Administration (formerly the Resettlement Administration) has reached 9,000 farm families in North Carolina, about 65% of whom were non-owners.[1] This program, which has been in operation for the past three years, makes available credit and supervision to low-

[1] Information regarding the operations of the FSA in the State was kindly made available by Mr. Marshall Thompson, Acting Regional Information Adviser, Raleigh, N.C.

income farmers and to tenants without proper credit from other sources. The interest rate on production loans is 5% and farmers have up to five years in which to repay. County supervisors, men trained in farm management and women trained in home management, visit the families who get loans, talk over each season's problems, and plan the year's work. It has been thought that before attempting to buy a farm the tenant should first own his live stock and equipment and learn to manage a farm. Figures furnished by the FSA show that the average rehabilitation family in North Carolina has increased its net worth approximately $213 since first receiving assistance. Foodstuff grown and used annually on the farm has increased $150 per family; feed and food crops of rehabilitation families have increased from 62,000 to 109,000 acres; and the number of work animals has gone up from 3,264 to 7,865.

The FSA rehabilitation program has also encouraged use of improved leases. As stated before, about 65%, or 5,850, of the rehabilitation families in North Carolina are tenants. A study of their farm records, through 1937, shows that 4,412 of these families have improved their tenure in one way or another since they came on the program. A large number have been able to get from their landlords a written lease instead of a verbal agreement. Some have advanced from farm laborers or sharecroppers to tenants who own their teams and tools. Others have moved to better farms, while others have managed to get longer leases with renewable clauses.

During 1938 practically all rehabilitation clients have secured some kind of a written lease and county FSA supervisors, in cooperation with county extension agents, are gradually educating tenants and owners in use of improved farm-lease forms. Efforts are made to point out that the landlord wants his soil improved, his buildings repaired or kept in repair, and his fences kept up and that the rehabilitation tenant may get credit and helpful advice in doing these things if a long-time lease is given him, or if some practical plan is agreed upon to pay him for what he does. Thus an attempt is being made to use the rehabilitation loan program as a lever to encourage landlords and tenants to work together. This program reaches only a limited number of tenants but it does constitute a demonstration of methods of improving tenure relationships and reaches a larger number of persons than can be helped any time soon under the limited ownership program.

The Bankhead-Jones Farm Tenant Act, recently enacted, provided for continuation under the FSA of the above-mentioned rehabilitation program and authorized funds to start a program of farm ownership for tenants. Under that Act machinery has been set up for making land-purchase loans in the State this year to slightly more than 100 tenants in 17 counties and these loans are now being processed. But prior to enactment of the Bankhead-Jones Act, farms were purchased and developed for 100 other tenants near Goldsboro, N. C. This project, started by the former Resettlement Administration and carried on by the FSA of the Department of Agriculture, has been a forerunner in this State of the new Bankhead-Jones tenant program. The Resettlement Administration in 1936 set aside a portion of its funds to be used for the purchase of 100 family-sized farms, designated as the North Carolina Tenant Security Farms. The North Carolina Land-Use Planning Committee, composed of personnel of the North Carolina Agricultural College, selected Harnett, Sampson, Johnston, and Wayne Counties in the heart of the high-tenancy, cotton and tobacco region of eastern North Carolina as the area in which to purchase these farms.

Land for this project was appraised, before being optioned and purchased, by well trained farm land appraisers. Ninety-six per cent of the farms were purchased from non-resident owners. Most of the farms purchased were individual family-sized units scattered in various communities of the counties. The families now occupying these farms were selected by a county committee composed of the county agent, the county rural rehabilitation supervisor, and three farmers. The families were chosen on the basis of their past farming ability, managerial capacity, reputation for paying debts and meeting responsibilities, and indications of stability of residence. All families selected were given physical examinations. Of the 100 tenants selected to occupy these farms, 55 were occupants and operators of the farms at the time of purchase. After the farms were purchased, farm management men and home management women with practical training

assisted each family in making their farm and home plan. In most plans, the field arrangement of the farm was changed to provide more economic cultivation and to make the farm adaptable to a four-year rotation.

Each farm plan provided for a definite crop rotation, including cash, feed, and soil improvement crops. The cash crops were intended to help pay family living expense, farm operating expense, interest and rent or payment on the purchase price. The plan also provided for a garden, poultry, hogs, and cows intended to furnish a major portion of the family's food supply as well as to augment the cash farm income.

Existing buildings were repaired or new buildings constructed on each of these farms. The size of the occupant's family, the kind and acreage of crops produced, and the kind and number of live stock kept by the tenant governed the type of repair and construction work. Kitchen sinks and closets were placed in each house. Existing buildings were put in good condition so that the cost of upkeep would be small.

Each tenant upon entering into an agreement was given an annual lease renewable over a trial period of from one to five years. When the tenant had demonstrated his farming ability, he was given a lease and purchase contract. During 1937 the occupants of 41 of these farms demonstrated their ability to use good management practices and were given lease and purchase contracts, under which ownership is acquired by amortization payments of 3% interest and 1.33% on the purchase price of the farm each year over a 40-year period. In most instances the annual payment of interest and principal is less than the normal share of crop rent these individuals had been paying previously. As other occupants demonstrate their ability to use good farm management practices, it is expected that they will enter into lease and purchase agreements on the farms they occupy.

Last year 60 of the 100 farmers on the project kept inventory statements for the beginning and close of the crop year. At the beginning of the year the average assets of these families exceeded their average liabilities by $1,180.54. At the end of the year their average assets exceeded their average liabilities by $1,423.89. During the year, their average net worth or the difference between their average assets and their average liabilities showed an increase of $243.35.

The new Tenant Purchase Section of the FSA is following the plans of this project except that under the new program a direct loan is now made to the tenant with which he may purchase and improve a family-sized farm. Help rendered these tenants under the new program will be very similar to that given tenants on the North Carolina Tenant Security Farms Project. These tenants are being selected by a county committee composed of three farmers who have been selected by the Secretary of Agriculture upon recommendation of the State Farm Security Advisory Committee.

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1937 State Legislation for Control of Soil Erosion

I. Standard Law

THE principal class of statutes for control of soil erosion enacted in the 1937 sessions of the various state legislatures was that modeled after the Standard State Soil Conservation Districts Law.[1] This was a draft erosion control measure prepared in the Department of Agriculture to serve as a model for states wishing to enact legislation which would qualify under Section 3 (1) of the federal act of April 27, 1935, authorizing the Secretary of Agriculture to require enactment of state laws providing suitably for prevention and control of erosion, as a condition to extending the federal soil erosion benefits provided for therein.[2] The provisions of the Standard Law have been discussed elsewhere,[3] and for that reason only a few of its outstanding features will be indicated here. In the main, it provides for creation and operation of soil conservation districts as governmental subdivisions of the state.

[1] *A Standard Soil Conservation Districts Law* (Washington, 1936).

[2] Public No. 46, 74th Cong.; 16 USC 590 a.

[3] See David H. Allred, "Districts for Soil Conservation," 14 *Journal of Land & Public Utility Economics* 91–4 (February, 1938).

These districts are vested with power to prescribe land-use regulations binding on private land occupiers, and, in addition, with wide functions of planning, cooperation, demonstration, and service. Other provisions include those relating to referendum proceedings, to creation of a state soil conservation committee with certain prerogatives in the formation and management of the districts, and to establishment of boards of adjustment charged with safeguarding the equity of the regulations adopted.

Twenty-two states have adopted statutes more or less along the lines of the Standard Law.[4] Bills of a similar sort passed both houses of the legislatures of two other states, but failed of final approval.[5] In yet another state a law was enacted which, though it bears many resemblances to the Standard Law, is thought to be insufficient to meet the essential requirements contemplated by it.[6]

II. Laws Other Than Those Modeled after the Standard Law

In addition to those modeled after the Standard Law, a number of other erosion statutes were enacted. Some of these provide for exercise of public control over private land, while others merely provide for certain types of assistance.

A. Compulsory Legislation

New Mexico. The most elaborate of these acts is the Wind Erosion District Act of New Mexico.[7] This law is in addition to a Soil Conservation Districts Law passed in the same session of the New Mexico Legislature.[8] The intended relation between these two acts, both of which contemplate creation of control districts, is apparently indicated in Section 16 of the latter:

"... nor is it intended to affect, impair or impinge upon the Wind Erosion Districts created or ones that may hereafter be created .... All privileges and emoluments herein granted and conferred shall be complementary of and supplementary to such Wind Erosion Districts heretofore created and now existing or hereafter created under the terms of said Wind Erosion District Act."

By way of comparison, the sole type of erosion with which the wind districts are concerned is that caused by wind, and thus their scope is somewhat more restricted in form, if not in fact, than that of soil conservation districts which operate on all types of erosion. The agency charged with supervision over formation of a wind erosion district is the board of county commissioners, whereas in the case of a soil conservation district it is a specially constituted state committee. A wind erosion district must of necessity lie within the confines of a single county, whereas the aereal extent and location of a soil conservation district are not so limited. Each, however, is a political subdivision of the State, possessing local legislative powers.

The first step in the formation of a wind erosion district is the submission of a petition, signed by 25% of the freeholders owning more than 25% of the land within the proposed district area,[9] to the board of county commissioners. The latter then holds a hearing[10] and otherwise considers the petition to determine: (1) that the petition is in due form; (2) that operation of the district will be "practical and feasible"; (3) that the public health, safety, and welfare of inhabitants of the district will be benefited; and (4) to make all necessary modifications in boundaries, so as (a) to include lands, not covered in the petition, which the owners thereof desire to be included, and (b) to exclude all land which will not "be benefited by wind erosion control, *or* will not menace other lands, *or* will not jeopardize the public health for want of wind erosion control." When these conditions have been met, the

[4] Arkansas, c. 197; Colorado, c. 241; Florida, c. 18144; Georgia, Act 339, p. 377; Illinois, p. 10; Indiana, c. 232; Kansas, c. 5; Maryland, c. 437; Michigan, Act. 297; Minnesota, c. 441; Nebraska, Bill 553, approved May 18; Nevada, c. 212; New Jersey, c. 139; New Mexico, c. 219; North Carolina, c. 393; North Dakota, c. 9; Oklahoma, c. 38, Art. 4; Pennsylvania, Title 3, c. 13, §§791–848 Purdon's Penna. Stat.; South Carolina, S.B. 523, approved April 17; South Dakota, c. 19; Utah, c. 116; Wisconsin, c. 341. (Except as otherwise indicated the citations are to the 1937 session laws.)

[5] Texas, H.B. 24; Ohio, H.B. 486.

[6] Montana, Laws 1937, c. 157. See P. M. Glick, "State Legislation for Erosion Control," *Land Policy Circular*, July, 1937, pp. 19, 23.

[7] Laws 1937, c. 222.

[8] Laws 1937, c. 219.

[9] In the case of a New Mexico soil conservation district, the signature of 25 land owners is sufficient.

[10] The county commissioners not only hear interested parties but also give consideration to comments and recommendations sent in by the State Director of Agricultural Extension, who is authorized and directed to make or cause to be made a survey of the proposed district.

board is directed to issue an order "defining and establishing the boundaries and fixing the name of such proposed wind erosion district." Following this, a referendum is held to determine whether the district shall be organized and to elect a district board of supervisors. Each owner is entitled to one vote for each acre of "agricultural land" (undefined) which he possesses in the proposed district.[11] The act is silent as to the majority necessary for approving establishment of the district,[12] although the election of supervisors is sufficiently covered. Possibly the matter is taken care of by general inference or by the provision that "insofar as applicable, the general election laws . . . except as in this Act otherwise provided, shall govern all elections under this Act" (§8, ¶9).

The district board of supervisors (composed of three "resident electors" serving biennial terms) is given the following main powers: (1) conduct surveys, investigations, and research into wind erosion problems and preventive measures, and disseminate information thereon; (2) adopt an official plan or program for controlling wind erosion in the district; and (3) take such action and adopt such uniform rules and regulations as it may deem necessary to carry out the official plan" (§10).[13] In carrying out its research and planning activity the district board is directed to cooperate with the State Director of Extension and with the local county extension agent. Compliance with land-use regulations by individual land owners is enforceable by court order, at the discretion of the court after a hearing, upon presentation of a petition by the district board setting out that the owner has failed to observe the regulations prescribed and "that such non-observance menaces the public health and safety or tends to increase erosion on such lands *or* is interfering with the preventing or control of erosion on other lands" (§10).[14] The court has power to permit the district board to go upon the land and do or have done the necessary control work, and to enter a judgment against the land sufficient to cover the costs, with interest at 8%.

"Ordinary administrative" expenses are met out of a tax (not exceeding 2 mills) on all land in the district, levied by the county board of supervisors upon recommendation of the district board.[15] Expenses incurred in the "prosecution of work in furtherance of the objects of this Act" are met out of a revolving fund, financed by state appropriations[16] and administered by the regents of the State Agricultural and Mechanical College, as well as out of monies collected from special assessments under court order against particular private lands on which control work is prosecuted; and the district is authorized to borrow money on the security of these revenues.

State lands under the respective jurisdictions of the State Land Commissioner and of the State Highway Department are declared to be subject to regulation by the district; and these agencies are directed to comply and cooperate. The Highway Department is further authorized to lend its equipment, provided the district pay operating costs.

Oregon. The Oregon law was enacted particularly to reach the so-called "wind blow"

[11] This is in contrast to the provisions of the Soil Conservation Districts Law, which gives each "occupier" one vote. Further, the referendum on formation of a soil conservation district is consultative only, although a simple majority is a necessary prerequisite.

[12] It is possible that this is a fatal defect. In contrast stands the fact that the majority requirements concerning a dissolution (which cannot take place before the expiration of five years after formation of a district) are express: that is, freeholders owning 60% of the land in the district must vote in favor of dissolution, after a petition signed by a majority of the freeholders owning more than ⅓ the land (§22). The majority required for establishment of an irrigation district is ⅔ (N.M. Stat. Ann. 1929, §73-206), while in the case of a drainage district a simple majority is sufficient (*Ibid.*, §40-309).

[13] The functions and powers are thus less detailed and comprehensive than those vested in a soil conservation district.

[14] Cf. the conditions set out in the Soil Conservation Districts Law as prerequisite to the seeking of a court order to enforce compliance: " . . . that such non-observance tends to increase erosion on such land and is interfering with the prevention or control of erosion on other lands." However, a soil conservation district is vested with a general sanction not given the wind erosion district—namely, violation of conservation district land-use regulations is made a misdemeanor punishable by a $25-200 fine.

[15] "Ordinary administrative expenses" apparently includes such items as office rent, pay of the district board members ($3.00 per diem for not exceeding 45 days), and traveling expenses.

[16] The sum of $10,000 is appropriated, to be "immediately available" (§21). A similar amount was appropriated for the Soil Conservation Districts Law.

situation in the grazing country of the northeastern part of the State. A "wind blow" gets its start on soil which is insufficiently anchored (for example, as a result of serious overgrazing), and from there, unless stopped, it rapidly spreads to adjoining land in its path. While the area affected by a particular "wind blow" is not usually very large, its effects are serious, since the top-soil is stripped clean.

The statute[17] enables the county court (i.e., board of supervisors) of any county lying east of the Cascade range to create wind erosion districts, upon petition of ⅔ of the landowners (provided a minimum of five landowners join in the petition) of the area in which a district is proposed. Once a district has been established, the "farm operators" within it elect an advisory board of four, with the following duties and functions: (1) to recommend a person to be appointed district "wind erosion inspector"; (2) to consult and advise with this inspector as to the most feasible methods of effectuating wind erosion control; and (3) to act as a board of appeals in disputes arising out of enforcement of the Act.

In active charge of control operations is a "wind erosion inspector," appointed for each district by the county court on recommendation of the district advisory board. This official is given the following duties:

"(1) determine when serious wind erosion conditions prevail, (2) serve notices on land owners or occupants to effectively control wind erosion or correct conditions which may allow wind erosion to occur, and (3) when necessary control or supervise control of wind erosion or conditions which may allow wind erosion to occur on lands where the owners or occupants thereof fail or refuse to do so."

He is given full access to private lands and is made "sole judge of whether serious wind erosion conditions do or do not prevail," saving an appeal to the district advisory board. Whenever in his judgment conditions necessitate the taking of control measures, he serves notice on the occupant or owner by posting. In case serious blowing is actually in progress the occupant is allowed four hours from the posting of notice to begin adequate control measures; in other cases, five days' grace is given. If the necessary measures are not commenced by the owner or occupant within the allotted time, the inspector is free to go in and do or have them done, at the expense of the owner, after having obtained specific authorization from the county court (i.e., the board of supervisors).[18] The latter is in addition empowered to set up a wind erosion fund, financed by a general tax, to provide money for controlling erosion on county lands and for bearing the expense of measures "which cannot be fairly charged to the individual landowners."

Oklahoma. In addition to passing a law following the Standard State Soil Conservation Districts Law, the Oklahoma Legislature enacted a less comprehensive Wind Erosion Control Law, apparently designed to supply needed wind erosion control in three different situations: (a) where soil conservation districts have not been established; (b) to fill in pending adoption of land-use regulations by an established soil conservation district, and (c) to supplement the activities of soil conservation districts.[19]

Two different procedures are established for application of the measures contemplated, in each case the board of county commissioners being the directing authority. One procedure is to be followed in those parts of the State declared by the Extension Division of the State Agricultural and Mechanical College to be "Wind Erosion Areas," where presumably there is particularly a wind erosion hazard; the other procedure is to be followed in the remainder of the State.

All counties, or parts thereof, lying within Wind Erosion Areas are to be subdivided by the Extension Division into "communities"; and the rural landowners of each elect a community committee of three, under regulations prescribed by the Extension Division. In turn, county wind erosion control committees are to be formed, composed in each county of representatives from its various community committees. The function of the community committeemen is

"to observe the land in their community and to make a written complaint to the County Committee, signed by a majority of the members . . . if, in their opinion, any land in their community has become, or is likely to become a wind erosion hazard and thereby a nuisance . . . "

All such complaints which are found by the county committee to be well grounded are

[17] Laws of 1937, c. 131.

[18] In emergency cases, verbal authorization by telephone from one member of the county court is sufficient.

[19] S.L. 1937, c. 38, Art. 5.

turned over by it to the board of county commissioners with "a request that the Board of County Commissioners take such steps as are delegated to it in this Act to cause certain practices as are recommended by the Extension Division . . . and approved by the County Committee to be carried out on said land." No provision is made for assessing the cost against the landowner, and presumably it would be borne by the county erosion fund.

In those parts of the State not comprised within Wind Erosion Areas, the seeming intent is that the boards of county commissioners be authorized to require control measures ("cultivation, plowing, listing or chiseling") on lands where there is a wind erosion hazard, under certain conditions: (1) such measures may be prescribed only where soil conservation district land-use regulations have not been put into effect; (2) the county board may not act until after presentation of a petition signed by ⅔ of the "persons owning, renting and actually using farm tracts" located in whole or in part within ½ mile of the land alleged to be an erosion hazard; (3) a hearing has to be held on the petition, at which the owner or occupant is given opportunity to be heard (after notice by registered mail); and (4) land subject to control measures must be in the so-called "neglected tract" category, which is defined to be a tract of land

> "which has, within at least one of the two prior years, had at least 20 per cent of its area in cultivation and which tract will not be in cultivation during the year, and by reason thereof will probably drift to, on, over and across one or more . . . adjoining tracts and injuring the growing crops thereon unless same is cultivated, plowed, listed or chiseled" (§4).

The cost of control measures is to be met out of the "County Erosion Fund," created under provisions of another 1937 statute.[20]

Certain deficiencies in the terms of the Wind Erosion Control Law raise questions as to how extensively it will be applicable, if judicially contested. Concerning the procedures to be applied in Wind Erosion Areas, no power is expressly vested in the county boards actually to effectuate control measures. Concerning the procedures prescribed for territory outside Wind Erosion Areas: (1) the contemplated powers of the county boards are not stated in unmistakable terms;[21] and (2) both the title and Section 6 (antepenultimate paragraph) of the Law apparently contemplate that its provisions will be operative only in Wind Erosion Areas.

Kansas. A statute of especial interest, because of its particular background, is the Kansas wind erosion control law,[22] designed to replace a former soil drifting statute which was declared unconstitutional by the State Supreme Court.[23] The terms of the old soil drifting law (as amended) were brief; the county boards simply were authorized, in the general terms of a single section, to "devise methods and means to stop the drifting of soil," to order such methods and means to be carried out by landowners, and to enforce compliance by having the work done and assessing the cost against the land. This law was held by the court to violate the provision of the Kansas Constitution allowing only legislative power of a local nature to be delegated to counties. The reasoning was that wind erosion is a state-wide rather than a local problem, since winds sweep from beyond and across county borders; and that hence the granting of legislative powers to counties to control wind erosion involves a delegation not of local but of state legislative power.

The new measure declares it to be the duty of all landowners to prevent dust blowing, by "planting of perennial grasses, shrubs or trees, or annual or biennial crops," or by appropriate cultivation practices. It then goes on to provide for effectuating its purpose by vesting certain powers in the several boards of county commissioners. These powers are apparently designed to meet two situations: (1) emergency cases of wind erosion (§4,) and (2) chronic wind ero-

[20] S.L. 1937, c. 50, Art. 9. This fund is financed by means of a tax on tractors.

[21] I.e., the first sentence in §4 is incomplete. The third paragraph of the Section, however, may sufficiently supply the deficiency.

[22] Laws of 1937, c. 189, entitled "An act providing means of reducing the injurious effects of wind-blown dust and soil erosion . . . ." This is in addition to a Soil Conservation Districts Law.

[23] *Kansas ex rel Perkins v. Hardwick*, 144 Kan. 3 (1936). The invalidated statue was Laws 1913, c. 150 as amended by Laws 1933, c. 60 and Laws 1935, c. 138. See G. S. Wehrwein, "Wind Erosion Legislation in Texas and Kansas," 12 *Journal of Land & Public Utility Economics* 312–3 (August, 1936) and E. H. Teagarden, "Control of Wind Erosion," 13 *Ibid.* 420–1 (November, 1937).

sion situations (§§5 and 6). Section 4 requires the county board to inspect without delay any land which is known or alleged to be blowing. If this inspection reveals that the soil is being blown in such quantities as to be injurious either to (1) the land from which it originates, or (2) near-by land, or (3) the public health, the county board is required to prescribe any methods of "prompt cultivation" which would in its judgment prevent or "materially lessen" the erosion. In all feasible cases consultation must be held with the owner. However, in case consultation would cause unreasonable delay or in case the owner refuses to do the work within the specified time, the county board is authorized to do the work itself or employ a third party to do it.

Section 5 requires an annual survey to be made by each county board, with a view to ascertaining erosion conditions and determining appropriate control measures. The next section outlines a procedure to be followed when the county board proposes to prescribe measures of a permanent nature to control cases of repeated blowing. Hearings are held at which both the affected landowners and experts in erosion control are given an opportunity to testify.

"Respecting the land concerning which a hearing has been had the board of county commissioners is authorized to determine what treatment of the land is necessary to prevent its blowing, whether it shall be planted to annual or biennial or perennial grasses, shrubs, or trees, or, if cultivated, the manner and times of year of such cultivation, and may order that the land be treated in accordance with this conclusion, and if such orders are not complied with by the owner of the land the board of county commissioners may do or have done the planting or cultivation ordered."

Whenever work is done by the county board, the cost (not exceeding $1.00 per acre) is assessable against the land (saving an appeal to the courts by the owner), except to the extent the board may feel that the county should share the burden. However, assessment may not be made if the owner, at a hearing to which he is entitled, can show that the work was necessitated by circumstances beyond his control and which could not reasonably have been anticipated. In order to finance public expenses incurred under the law, the county is authorized to create a special "soil-drifting fund," supplied from the proceeds of a general property levy not exceeding one mill.

A further feature of the law is the provision requiring the secretary of the State Board of Agriculture to collect and disseminate pertinent information regarding erosion conditions in the State and regarding practical methods of control. In this task he will have the aid of annual reports sent in from the various counties, embodying the information gathered in annual surveys which the county boards are required to conduct. Finally, the same official is made the State's agent for entering into soil conservation agreements with the Federal Government and for accepting and distributing federal soil conservation monies.

Whether the new law will be found to meet the major constitutional objections to the old law will depend upon whether it is construed to involve a delegation of power of more than a local nature. The type of erosion control envisaged is the same, namely, wind erosion; and the controlling agency is the same, namely, the boards of county commissioners.[24] The new law differs from the old in some respects, such as: the provisions are more detailed; certain of the duties are mandatory, rather than all permissive; certain standards to guide the actions of the county board are set forth; and provisions are made for adequate hearings and for appeals against inequitable actions by the county boards.[25]

B. Non-Compulsory Legislation

Other erosion statutes were enacted which do not involve enforcement of land-use regulations against private owners, but are limited to providing certain services or methods of voluntary cooperation.

[24] Earlier in the 1937 session the Legislature had enacted another wind erosion control law (H.B. 130), which provided for adoption and promulgation of erosion control regulations by the State Board of Agriculture, and restricted the role of the boards of county commissioners to administration and enforcement. While solving the constitutional problem of delegating legislative powers to county boards, it raised another, namely, delegation of legislative powers to a state administrative body. This, however, was repealed and replaced later in the same session by the law hereinabove discussed.

[25] One weakness of the old law, as suggested by the court, was its lack of provisions for hearings and appeals.

There are, of course, other differences such as provisions for collection and dissemination of information and for creation of a soil drifting fund financed by a property tax.

In Tennessee and South Carolina these acts provide for purchase and use of terracing equipment.[26] The Tennessee act[27] authorizes formation and organization of soil conservation associations under the Tennessee Cooperative Marketing Act.[28] An association so formed may petition the county court (i.e., board of county supervisors) to purchase terracing equipment whenever sufficient members have agreed to have terraced a minimum of 5,000 acres and pay their respective proportionate shares of the cost of operation and of the initial investment. In case the county court decides to purchase the equipment, the county treasury is to be ultimately reimbursed for the amount of the capital outlay. The equipment would presumably remain county property and be available for use at cost on any farm in the county, regardless of the owner's membership in the association. Further provision is made for obtaining the advice of the Extension Service and of its engineers as to the feasibility of organizing and as to the most efficient type of equipment; and for the employment of only competent and trained operators to operate the machinery acquired.

The South Carolina legislation comprises two special acts, applying to McCormick and Lexington Counties respectively. Each directs the appointment of a county cooperative (or agricultural) soil conservation board, by the county delegation in the State Legislature. Each provides for the borrowing of money through the county government, in order to finance the purchase of terracing equipment. The money borrowed is to be reimbursed through fees paid by individual farmers on whose land the equipment is used and, if such revenues are insufficient, out of the county treasury.[29]

An Oklahoma law[30] provides for utilization by the various counties of the "County Erosion Fund,"[31] in addition to its employment in connection with the Oklahoma wind erosion control law discussed above. Two objects of expenditure are specifically set out: (1) the construction of terraces to prevent water or wind erosion and to conserve moisture, and (2) the construction of ponds to capture and conserve "flowing surface, subterranean and drainage water." In each case the person desiring assistance must be one "owning, renting and actually farming or cultivating," and must submit to the Board of County Commissioners "a written application approved by the [State] Extension Division." The work is to be done by the applicant; and the county erosion fund bears not to exceed ½ the expenses incurred (which are limited to labor costs alone in the case of terracing). In the case of terracing operations, the limit on the amount thus contributable is $500 for any one applicant, and $10 per mile of terrace constructed. The applicant obligates himself to "contour farm" and to maintain the terraces for a period of two years. Should he fail to maintain the terraces, the county is authorized to make the necessary repairs and assess the charges as a lien against the land. In the case of pond building, the limit is $150 per applicant and $15 per acre foot of water impounded. The applicant gives the county the right of ingress and egress for a period of five years "for the purpose of operating or controlling" the pond and its appurtenant dam, in order to effectuate the objects of the law.[32] In no event may the county commissioners obligate the fund except to the extent that monies are actually on hand in it.

Other legislation of interest might include the statute enacted by North Dakota, providing bounties for growing trees,[33] and the

[26] Tennessee, c. 5, 2nd Ex. Sess., 1937. South Carolina, Acts 1937, Nos. 436 and 470. A North Carolina act (Laws 1937, c. 25) amends a 1935 statute of the same character by reducing from 29 to 28 the number of counties in which it is operative.

[27] This act was amended during the same session to provide also for cooperative purchase and operation of lime pulverizing equipment.

[28] Enacted in 1923. Williams' Tennessee Code of 1934, §§3784–3830.

[29] In each case the "full faith and taxing power" of the county is pledged as security.

[30] Laws 1937, c. 35, Art. 5.

[31] See footnote 20 *supra*. The fund is financed by a tractor tax, calculated on the basis of horsepower and graduated according to the age of the tractor. This tax is collected initially as a state tax, but is distributed (to the amount of 97%) to the various counties in proportion to the number of tractors licensed in each.

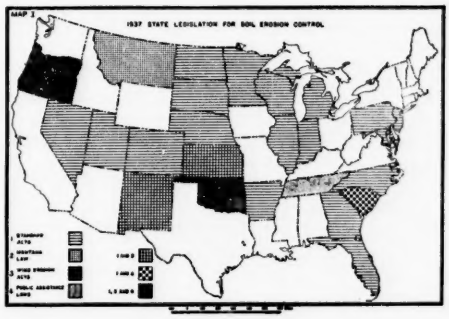
[32] As set forth in the first section, these are: "the conservation of water, soil and moisture, the capture, use and detention of flowing surface and subterranean water and drainage water; in the preservation of habitability, productivity and public utility of the land of the State of Oklahoma."

[33] Laws of 1937, c. 252. South Dakota also made a minor amendment to previously enacted tree-bounty legislation (Laws 1937, c. 256). Two bills (S.B. 875 and 1196) providing for tree bounties in Minnesota failed of passage.

Texas act authorizing formation of corporations "to establish, maintain, operate and engage in the business of grading, constructing of terraces and drainage structures and all other forms of dirt construction work."[34]

Summary

All told, this mass of legislation means that half the states of the Union, comprising even a larger proportion of the total rural land area in which erosion is particularly a menace, have in one year given clear recognition to an active public interest in the control of soil erosion (Map I). In addition to facilitating cooperative activity and to lending, in a modest way, their taxing and financial powers to achieving the ends of conservation, the states have gone far in conferring on existing or newly created local units the authority to carry out needed measures in the face of individual instances of noncooperation. The techniques established are various, although the prevailing methods have been those suggested by the Standard Law. While special situations have in a few cases called for special types of measures, in a general way it can be said the variety of techniques set up will permit comparisons in operation and help to suggest those which will eventually be most effective.



The year 1937 has thus witnessed the most tremendous step forward yet expressly made on the state legislative level for conserving the nation's land resources. The stage is set for constructive action on a broad front, and it remains to see how adequate the results, achieved through local initiative, will be.

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[34] S.B. 284, approved May 1, 1937 (Vernon's Rev. Civil Stat. of Texas, Art. 1302 (103)). Laws the main purpose of which is flood control or reclamation, such as the Texas San Jacinto River Conservation & Reclamation Act, are not here discussed.

Public Utilities Department

E. W. Morehouse, *Editor*

The Importance of the Electric Bond and Share Decision

THE extended and involved litigation concerning the Public Utility Holding Company Act came to a temporary conclusion with the recent decision of the Supreme Court in the case of *Securities and Exchange Commission* v. *Electric Bond and Share Company*.[1] To understand the effect of the decision it must be made clear just what was before the Court and what was decided. The Government had brought a bill against Electric Bond and Share Company to compel it to register[2] with the SEC. In its answer the Company contended that the control provisions of the Holding Company Act were unconstitutional and that, since they were inseparable from the registration provisions, the Act as a whole must fall. By way of a counterclaim, an injunction against enforcement of the Act and a declaratory judgment declaring the entire Act unconstitutional were sought. The counterclaim was dismissed, and all that was decided was that the control provisions were inseparable[3] from the registration provisions and that the latter were constitutional as an exercise of Congressional power over interstate commerce and the mails.

In view of the fact that the decision of the Court was limited to the narrow issue of the constitutionality of the registration provisions, the real effect of the case is not certain. The most that can be said for the present is that utilities within the Act must register or cease from transactions in interstate commerce or by use of the mails. Most of the utilities have chosen the former alternative, but the really important issues and questions have been avoided and remain open for future litigation.

However, the decision is much more than meaningless. Its importance lies in the fact that it is now a great deal more probable that the validity of the Act will be sustained.

The cross-bill for a declaratory judgment had been dismissed because a justiciable controversy[4] was not present; and to give a declaration in those circumstances would be doing so merely on a hypothetical state of facts.[5] The control provisions could not be applicable to defendant until registration; further, it was not known if defendant would register; and even if registration were filed, it was not at all certain how enforcement of the Act would affect defendant's constitutional rights.

The Court has said that Electric Bond and Share must register or cease from carrying on any transactions in interstate commerce or by use of the mails. Assuming registration, the question arises concerning the extent to which a registered company is more favorably situated to attack the constitutionality

[1] U.S.L. Wk., March 29, 1938.

[2] Section 4 (a) of the Act (49 Stat. 812 (1935), 15 USCA §79 (d)(a) (Supp., 1936)) makes it unlawful for a holding company to carry on certain acts in interstate commerce or by use of the mails unless the company is registered under §5 (49 Stat. 812 (1935), 15 USCA §79 (e) (Supp., 1936). Section 5 provides for registration by the filing of a registration statement with certain required information. The remainder of the Act contains the control provisions applicable only to registered companies.

[3] The test of separability is usually whether the legislature would have intended the remaining sections of a statute to stand without the invalid sections. See Sterns, "Separability and Separability Clauses in the Supreme Court," 51 *Harvard Law Review* 76 (1937). Congressional debates concerning the Holding Company Act would seem to indicate separability (79 *Congressional Record* 14622 et seq. (1935)). But notice the statement of Chairman Landis, Sept. 28, 1935: "But the process of registration means more than merely the gathering of information. Out of the registration springs the mechanism of control." See also Defendant's Brief for the Circuit Court of Appeals, pp. 32–8.

[4] For discussions of what is a justiciable controversy see *Black v. Little*, 8 F. Supp. 867 (E.D. Mich., 1934); *Acme Finance Co. v. Huse*, 73 P. (2d) 341 (Wash., 1937); *Aetna Life Insurance Co. v. Haworth*, 57 S.Ct. 461 (1937), noted in 32 *Illinois Law Review* 244 (1937).

[5] All courts agree that declaratory judgments will not be given on hypothetical states of facts. The difficulty is in determining what is not a hypothetical state of facts (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1935); *In Re Eubanks*, 202 N.C. 357, 162 S.E. 789 (1932) (no declaratory judgment in an ex parte proceeding in which petitioner seeks to have his racial status determined by judicial decree); *Miller v. Miller*, 149 Tenn. 463, 261 S.W. 965 (1923); *Nashville, Chattanooga & St. Louis R. R. Co. v. Wallace*, 288 U.S. 249 (1933)).

of the Act. It seems clear that an attack upon the Act as a whole would not be sustained. The delimited issues required for declaratory judgments or injunctions would not be present even after registration. Similarly, until the Commission had issued a specific order to a particular company under the reorganization provisions of Section 11, it would be very difficult to ascertain the effect of that section, and from the recent statements of the Court, that it prefers to have narrow issues before it and to see the actual effect of legislation, it seems almost certain that Section 11[6] will not be successfully attacked except in particular cases. When such a case does arise, it is very possible, because of the strong presumption in favor of the validity of the statutes, that the Court will say that the Commission, in that particular case, had acted beyond its statutory power, rather than declare the section invalid.

Some of the sections, however, do present a clear and delimited controversy. Those are the sections which make certain activities by a utility a violation of the statute per se.[7] But even here, a declaration might be refused according to the dictation of policy.[8] On the one hand are the desire and need of the utilities to know how to plan their businesses for the future; on the other are the desire and the necessity of the Court to watch legislation in operation before passing on its validity.

At any rate, it seems certain that the statute will not be subjected to a wholesale attack. Herein lies the importance of the Bond and Share decision. Only particular provisions will be tested one at a time, possibly by way of declaratory judgment or injunction, but much more probably in a suit by the Government to recover penalties for violation, with the resulting greater probability that the Act will for the most part be sustained.

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[6] 49 Stat. 820 (1935), 15 USCA §79 (k) (Supp., 1936).

[7] Note §12 (49 Stat. 823 (1935), 15 USCA §79 (l) (Supp., 1936)), dealing with inter-company loans, extension of credit, solicitation of proxies, contributions to political campaigns, etc. Note also §§13, 14, and 15.

[8] The statute is not mandatory. The Court can refuse to give a declaration in its own discretion. "In cases of actual controversy, the Courts of the United States shall have power upon petition, declaration, complaint or other appropriate pleadings to declare rights and other legal relations . . . ." (48 Stat. 955 (1934), as amended 49 Stat. 1027 (1935), 28 USCA §400 (Supp., 1936)).

Public Utility Financing in the First Quarter of 1938

THE aggregate of $155,865,000[1] for security flotations in the first quarter of 1938 represented a decline of 59.5% from the total of $384,922,694 recorded during the same period last year but an increase of 42.8% over the preceding quarter's total of $109,164,480. The bond market continued unreceptive to public offerings except for higher-grade securities which continue to command good prices and even premiums in many cases.

The status of the market undoubtedly accounted for the preponderance of private sales of securities during the period under review. Of the 14 issues comprising the total volume recorded by the *Chronicle*, eight were placed privately, one was a maturity extension,[2] and only five were offered to the public. Of the five public offerings, one was a preferred stock made available to stockholders through subscription rights. Except for this one stock issue, all offerings were long-term debt obligations with maturities of 10 years or longer.

The 14 issues ranged in size from $300,000 to $57,000,000, with an average of $11,133,000 and a median ($5,150,000) falling between $2,300,000 and $8,000,000. In general, the larger issues were sold to the public and the smaller issues represented private sales, although one issue in the latter category amounted to $20,000,000.

The *Chronicle* classified $91,738,810, or 58.9%, of the quarter's total public utility

[1] As compiled by *The Commercial & Financial Chronicle*. An issue of $2,925,000 New York State Electric and Gas Corporation 5% Notes due March 1, 1948 reported by other services was not included in the compilation. These notes were offered solely to residents of New York State. Further details are not available.

[2] Unextended bonds were purchased by an insurance company.

flotations as being for new-capital purposes. This ratio of new capital was considerably higher than that of only 7.2% noted for the first quarter of 1937. In fact, the percentage of new capital exceeded that for any quarter during 1936 or 1937.

Long-Term Debt Financing. Except for an issue of $1,000,000 of preferred stock, the first quarter's total consisted entirely of long-term debt issues. The four issues offered for public sale are analyzed in Table I. Although public financing represented only four of the 13 long-term debt flotations during the quarter, it accounted for $106,000,000, or 68.4%, of the total long-term debt financing. The weighted averages indicated in Table I compare fairly well with the corresponding quarterly measures of publicly offered long-term debt issues during 1936 and 1937.[3] The average cost of money of 4.05% was exactly the same as during the last three months of 1937 but it was higher than in any of the preceding quarters of the past two years. Underwriters' commissions of 2.27% were fractionally higher than in earlier quarters, but incidental expenses fell within and toward the lower limit of the range of this item during preceding periods. The average yield of 3.86% on the offering price was higher than that during any quarter of the two preceding years during which period this item ranged from 3.37% to 3.82%.

Long-term debt issues placed privately were:

$20,000,000 New England Telephone and Telegraph Company First Mortgage 3½% Bonds due February 1, 1968, sold at par in February;

$15,000,000 Pacific Gas and Electric Company First and Refunding Mortgage, Series I, 3½% Bonds due June 1, 1966, sold in February;

$8,000,000 Southern New England Telephone Company 3¼% Debentures due April 1, 1968, sold at 102 in March;

$2,300,000 Long Island Lighting Company First Refunding Mortgage, Series C, 4% Bonds due June 1, 1960, sold in March;

$1,000,000 Upstate Telephone Corporation First Mortgage 4% Bonds due January 1, 1963, sold at par in January;

$600,000 Bangor Hydro-Electric Company First Mortgage 3½% Bonds due March 1, 1963, sold in March;

$400,000 Indiana Associated Telephone Corporation First Mortgage, Series B, 4½% Bonds due October 1, 1965, sold at 105 in March; and

$300,000 California Water Service Company First Mortgage, Series B, 4% Bonds due May 1, 1961, sold in January.

In addition to the foregoing issues, Rochester and Lake Ontario Water Service Corporation offered an extension to March 1, 1951, to holders of its $1,265,000 First Mortgage 5% Bonds. Arrangements were reported whereby an insurance company offered to purchase unextended bonds at par and deposit them for extension under the plan.

The one stock issue included in the compilation for the first quarter of 1938 was 10,000 shares of Cumberland County Power

[3] For a tabulation of the averages by quarters during 1936 and 1937 see 13 *Journal of Land & Public Utility Economics* 71 (February, 1937) and 14 *Ibid.* 73 (February, 1938).

TABLE I. SUMMARY AND ANALYSIS OF LONG-TERM DEBT ISSUES OFFERED PUBLICLY, FIRST QUARTER, 1938

Company and Issue (A)	Coupon Rate (B)	Principal Amount (C)	Maturity Date (D)	Month of Offering (E)	Offering Price* (F)	Offering Yield (G)	Underwriters' Commissions* (H)	Proceeds to Company* (I)	Estimated Incidental Expenses* (J)	Net Proceeds* (K)	Cost to Company† (L)
	%				%	%	%	%	%	%	%
Appalachian Elec. Pr. Co. First Mortgage	4	$57,000,000	2-1-63	Feb.	98.75	4.08	2.50	96.25	0.54‡	95.71	4.28
Consol. Edison Co. of N.Y., Inc. 20-Year Debentures	3¼	30,000,000	1-1-58	Jan.	101.75	3.39	2.00	99.75	0.66	99.09	3.56
Appalachian Elec. Pr. Co. Debentures	4¼	10,000,000	2-1-48	Feb.	100.50	4.44	2.00	98.50	0.54‡	97.96	4.76
Consumers Power Co. First Mortgage	3¼	9,000,000	11-1-67	Jan.	102.00	3.39	2.00	100.00	1.02	98.98	3.55
Weighted Averages	3.86				100.04	3.86	2.27	97.77	0.61	97.16	4.05
Totals§											

* Expressed as a percentage of the principal amount shown in Column (C).
† Computed on a bond yield basis using net proceeds per Column (K).
‡ Pro rata share of total expenses on two issues.
§ Totals which represent summation of actual amounts are: Principal Amount, $106,000,000; Offering Price, $106,042,500; Underwriters' Commissions, $2,405,000; Proceeds to Company, $103,637,500; Estimated Incidental Expenses, $648,156; Net Proceeds, $102,989,344.

and Light Company 5½% Cumulative Preferred Stock, $100 par value, offered at $97 per share in March. The Company's parent company made available to it $3 per share to the end that the issuer obtained $100 gross proceeds per share. Unsubscribed shares were offered for sale through investment houses as agents with commissions of $3 per share on stock sold by them. Incidental expenses were estimated at $1.61 per share.

In March 17,291 shares of $6 Cumulative Preferred Stock, no par value, of Indiana Associated Telephone Corporation were offered to the public at $98 per share. This flotation did not represent new financing, however, and it therefore has not been included in compilations for the period. The shares offered were owned by the issuer's parent who received the proceeds of the sale.

[4] For a description of the index and back figures through 1919 see "The Volume of Public Utility Financing, 1919–1935," 11 *Journal of Land & Public Utility Economics* 352–6 (November, 1935); 12 *Ibid.* 91–4 (February 1936); 12 *Ibid.* 208–10 (May, 1936); 12 *Ibid.* 320–3 (Aug., 1936); 12 *Ibid.* 431–3 (November, 1936); 13 *Ibid.* 71–7 (February, 1937); 13 *Ibid.* 213–5 (May, 1937); 13 *Ibid.* 320–2 (August, 1937); 13 *Ibid.* 423–5 (November, 1937); and 14 *Ibid.* 72–7 (February, 1938).

Index Number of Volume

The index numbers[4] of volume of public utility financing for the first quarter of 1938 are:

Period*	Total Capital	New Capital	Refunding Capital
January	24.57	29.49	3.35
February	62.20	30.17	200.49
March	8.27	9.24	4.10
First Quarter	31.68	22.97	69.31

* The bases for these index numbers are as follows: monthly average, 1926, equals 100 for the monthly series; quarterly average, 1926, equals 100 for the quarterly series; and the year's total for 1926 equals 100 for the annual series.

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What Does—and Will—"Prudent Investment" Mean?

THE proposition that "prudent investment" be taken as the legal basis for public utility rate-making continues to be a live issue, demanding careful consideration and ultimate decision. Situations that have brought it to the fore in recent months have included the Pacific Gas case,[1] wherein the Federal Power Commission supplemented the position of the California Railroad Commission by a forthright advocacy of the prudent-investment basis before the United States Supreme Court. The Court decided only that adoption of an investment or historical-cost rate-base did not constitute denial of due process of law. The question whether confiscation results therefrom is not definitely answered, but will arise again,[2] either in that case, which was remanded to the lower court, or in some other rate proceeding.

The negotiations over acquisition of various utility properties by the Tennessee Valley Authority have also given prominence to prudent investment. President Roosevelt has favored it, on several occasions, as the basis for rate regulation. Congress has been presented with bills to further its use, by Senator Sherman Minton of Indiana and by Congressman Frank R. Havenner of California.

Whose Investment?

Despite the attention given to the prudent-investment doctrine for a long period of time, there is either disagreement among some of its advocates as to what "prudent investment" really means, or else the phrase is used too loosely. The word "prudent," of course, admits of much difference of opinion in specific cases; but the general idea is readily understandable, and there can be ready agreement in principle. The apparent variation in meaning arises from the word "investment"; and the question is, "Whose investment?" To the man on the street, unconfused by accounting and valuation terminology, it would seem that an investment upon which utility rates are to be based should be the investors' own money, not that of other people. But in accounting and

[1] *Pacific Gas & Electric Co. v. Railroad Commission*, 302 U. S. 388, 58 S. Ct. 334 (January 3, 1938).

[2] In *Los Angeles Gas & Elec. Corp. v. R. R. Com.*, 289 U. S. 287 (1933) and in *Georgia Rwy. & Power Co. v. R. R. Com.*, 262 U. S. 625 (1923) the Court approved rates based substantially on historical cost.

valuation the word is widely used without regard to the source of funds; and there is grave danger that emphasis on prudent investment, without careful limitation as to source, will tend to propagate a rate-base which includes "investment" derived not from the purchasers of the securities but from the public, in the form either of contributions for extensions or of depreciation reserves.

Probably the most classic discussion and advocacy of prudent investment is the separate concurring opinion of Mr. Justice Brandeis in the famous Supreme Court case of *Missouri ex rel. Southwestern Bell Telephone Co.* v. *Public Service Commission*, 262 U.S. 276 (1923). Therein he said:

> "The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in the enterprise. Upon the capital so invested the federal Constitution guarantees to the utility the opportunity to earn a fair return." (p. 290)

If the concept of "capital embarked in the enterprise" (presupposing prudence, of course) is kept in mind, there need be little confusion, since that would not include customer contributions for extensions or depreciation.

The advocates of prudent investment may generally have the same basic idea as was expressed by the quotation from Mr. Justice Brandeis; but their terminology is misleading at times. For example, in the argument of the Pacific Gas case prudent investment was stated to be synonymous with historical cost; but while this was practically so in that case, where depreciation was handled by the sinking-fund method and donations were deducted, it would not be true where a depreciation reserve has been accumulated by charges to operating expenses.

The determination of prudent investment may be made by consideration either of the proceeds of the outstanding securities and their application, the earned surplus, etc., or of the fixed capital account, as representing original or historical cost, plus working capital and less depreciation; or from both approaches.

Persistence of the Value Idea

This discussion will not attempt to argue the many objections to reproduction cost—its great expense; the long delay; its unreal character; the limitation to the identical existing plant, rather than a modern, economical substitute; the uncertainty as to prices for materials in hypothetically large quantities, for obsolete equipment, and for labor under present conditions not actually encountered on a scale comparable to reproduction; "difficulty costs," arising from present-day traffic and underground congestion of pipes and conduits (similar in character to uncut pavement over mains); theoretical overheads and intangibles, etc.

Likewise, it is unnecessary here to enlarge upon the arguments of simplicity, certainty, and stability as outstanding advantages of prudent investment as the rate-base. These would make an old story to readers of this *Journal*, and they are widely admitted; however, their great importance in facilitating effective regulation can hardly be overemphasized.

Notwithstanding these practical arguments the courts still withhold general acceptance of prudent investment, although it has been approved, in effect, in various specific cases. Despite a partial realization of the logical view that value in any ordinary sense cannot exist independently of the rates that are being determined, the feeling evidently persists that there is a definite inherent "value"—and value in a commercial, not arbitrary, sense.[3] That feeling, presumably, is based upon analogy between the utility investor and the investor in a competitive enterprise. It seems to be assumed that in the latter type of enterprise the value of the plant fluctuates with changes in the estimated cost of reproduction; and there is possibly the related assumption that the price of the product can be raised at will, not only high enough to cover increased operating costs for material and labor, but also to provide a constant percentage of "return" on increased estimates of reproduction cost of the entire physical plant.

It can be argued that the value of articles

[3] One of the hopeful signs in the Supreme Court's treatment of the Pacific Gas case is to be found in Mr. Justice Butler's dissent, wherein he is greatly concerned because, in his opinion, the Commission did not find a "value," but merely a rate-base, and because the Court majority, represented by the Chief Justice, did not rebuke the Commission on that score. The Court majority thus seems to appreciate the artificial character of "value" in connection with utility rate-making, and may be receding from use of the term and concept.

currently manufactured for exchange and sale tends to vary with changes in the cost of the labor and materials entering into them, or with the cost of an equally efficient substitute—although other influences may offset any such tendency. But in the case of properties that normally develop over a period of several years, and are fixed in location, the effect of changes in construction costs upon the *value* of the plant as a whole is increasingly difficult, if not impossible, to measure or establish. With large industrial plants or public utilities, which grow up during the course of a long period and where anything approaching wholesale reproduction is a rare and abnormal event, the theory that the value of the plant as a whole varies with changes in current prices of material and labor is devoid of reality and impossible of proof.

This point and the overshadowing influence of other factors in relation to property values under competitive conditions are strikingly emphasized in an editorial in the *New York Times* (November 13, 1937), discussing utility rates and value:

> "It is first of all necessary to remind ourselves that with private enterprise under conditions of competition in the open market, profits (or losses) are determined neither by the actual sum invested in a property nor by its cost of reproduction. If a man builds a great hotel at a Summer resort, the amount that he can charge for his rooms has nothing directly to do either with what it actually cost him to put up the hotel or with what it would cost him to put it up now. If the resort becomes fashionable he may be able to charge rates that yield an extremely high return on his investment.
>
> "If there are already too many hotels at the resort, or if it ceases to be fashionable, he may be able to charge rates that barely pay running expenses and yield no return whatever on his investment. What happens in this case is typical of what happens under competitive enterprise. The public does not "owe" the investors in such enterprises any return on their investment. What those investors get depends not upon the size of their investment but upon supply and demand and the efficiency of the individual enterprise."

Another kind of difficulty, or pursuit of the unattainable, is in the linking of condemnation value with rate-making value. For example, Mr. Justice Butler in his dissent in the Pacific Gas case says: "The value to be ascertained is the money equivalent of the property, the amount to which the owner would be entitled upon expropriation." But in condemnation cases the general goal is market value; and for a going enterprise the question of earning power can hardly be eliminated. Even where a court has adopted replacement "value" in a public utility condemnation case, that could hardly be logical unless the court had also considered reproduction cost as at least the major element in value for rate-making. It seems reasonable that as rates and earning power create value in the usual sense, and thereby give economic reality to the so-called value, or rate-base, by use of which the rates were determined, that rate-base, whether it be prudent investment, reproduction cost, or something else, should be the chief factor in determining condemnation value of a going public utility. The use of a condemnation value arrived at in some other way would seem to be quite arbitrary; if it purports to represent market value and does not consider the rate-making process, it puts the cart before the horse; and if it represents something else, which is proclaimed to be a proper basis for rates also, then the whole rate-making discussion would have to be transferred to the condemnation field.

Interests of Investors

Even if a legislature, as a matter of public policy, or a court, in a similar role, were to decide that utility investors should be granted increased returns (beyond increases in operating costs) when construction costs go up, the method of swelling the rate-base is, of course, irrational where, as in most cases, the property investment is represented by both stocks and bonds. A utility company will contend vigorously for an increased valuation predicated on increased reproduction cost; will pour moral indignation upon anyone attempting to deny it such increase; will claim confiscation if rates are not raised to yield a return on the increased "value"; but it never proposes that the bondholders, who may have contributed 50% or more of the total construction cost (in some cases 100% of the actual cost), shall receive a single dollar more than they contracted for. An investor in utility bonds does not expect any such windfall; and, for that matter, it is highly doubtful whether the ordinary individual investing in a utility stock has any such thought in mind when he buys his shares.

Furthermore, if the utility stockholder is assumed to be entitled to such special treatment as granting him a return which fluctu-

ates with the general price level, so that his dollars will have a more constant purchasing power as to his individual needs, the use of reproduction cost is hardly logical; for utilities have been quick to point out lack of correlation between utility construction costs and the general price level, and there is also lack of close correlation between wholesale prices and cost of living, which is what interests the small investor.

The ability of a public utility company to attract capital for extensions and improvements is an important matter; by some it is regarded as the primary consideration in rate regulation. The prudent-investment doctrine, offering maximum protection to the money actually invested, seems much superior to the reproduction-cost basis, with its speculative features of promising high returns on high "values" in good times, but low returns on low values (theoretically) in bad times. With bond money seeking investment at low interest rates at the very time, a year or more ago, when the danger of inflation was being preached, it seems highly doubtful that the investor is as much interested in returns that fluctuate with price levels as with returns that are fairly certain in amount. In fact, he may well reflect that with the common stock equity usually a minor portion of the total investment, it may be completely wiped out if the "value" of the property determined by use of reproduction cost for rate-making purposes falls below the actual investment in bonds and preferred stock. The rate of return, rather than property valuation, presents the medium for taking care of the problem of rewarding investors and attracting capital.

A Hopeful Prospect

The foregoing concept of prudent investment in utility rate-making—basically the prudent investment of the investors—would eliminate the tremendous obstacle of reproduction-cost appraisals, including the determination of "existing" depreciation (if prudent and consistent treatment is accorded depreciation both in operating expenses and in the rate-base), and the somewhat lesser obstacles of "going value" and various other intangibles; and should facilitate the attraction of necessary capital. It leaves various other important problems: the question of prudence; the treatment (whether by modification of the rate-base or by adjusting the rate of return) of property not currently used and useful for existing consumers; the proper allowance for operating expenses; and, of course, the rate of return. Though these are vital and troublesome matters, the elimination of the other obstacles should make utility regulation more speedy and economical, giving it a chance to function more effectively than ever before; and the time does not seem to be far distant when a majority of the Supreme Court will recognize that prudent investment, not only in specific cases but as a general basis for utility rates, is no harbinger of confiscation.

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Extent of Metered Water Service in Wisconsin and Its Effect on Pumpage

IT IS interesting to note the effect on water pumpage, with its concurrent reduction in pumpage costs, of a change in water service from an unmetered to a metered basis. Because of discrimination that is likely to exist with the application of flat rates and because of the economies, increased plant efficiency, and greater customer satisfaction that result from metering water service, the Public Service Commission of Wisconsin in its regulation of water utilities, has endeavored, wherever feasible, to obtain the complete metering of service by water utilities operating in the State.

Although an attempt is made, in establishing a schedule of flat rates, to classify customers as to type and characteristics and to approximate a rate based on the probable use of water, it is difficult actually to devise an entirely fair schedule of rates that will apply to all customers in a non-discriminatory and equitable manner. Practically no account can be taken in the rate schedule of the relative possibilities that customers may have for increasing their individual requirements or unduly wasting water.

No premium is placed upon good and economical use of water. In fact, the economical user of water could be considered as being penalized in so far as he is required to bear

indirectly some of the expense of supplying water wasted by other customers.

Unmetered water service can be abused by customers in a number of ways. Water may be unnecessarily wasted; repairs of leaking faucets or plumbing fixtures may be neglected; or running water may be used for refrigeration or other purposes. A utility may adopt rules to regulate the use of water or require that leaky fixtures be repaired. In practice, such regulations have been found difficult to administer and police properly.

Table I indicates the extent to which water utilities in Wisconsin have adopted the metered basis of billing. Among the small water utilities reporting on a Class E classification, which on the average represent communities of 700 population, unmetered water service will be found to a large extent. Even with these utilities, there are a large number whose customers are fully metered. A large percentage of those utilities not fully metered have nevertheless metered the larger users of water, probably representing industrial, some commercial, and few residential customers.

As of December 31, 1936, water utilities included in Table I reported a total of over 92% of all customers as being metered. A variability in the definition of customer, as used by water utilities, should be taken into consideration. The above ratio is based on the assumption that the number of customers reported represents customer billings. In many cases the number of customers reported is known to include additional customers on a single meter or customer billing, as might be the case in service to apartments, institutions, or commercial establishments. To the extent that this is evident the ratio of 92% would be understated.

In Table II is presented a case study of the effect of metering on pumpage for Wisconsin communities that have recently concentrated on a metering program in any single year. This study covers a period from approximately 1924 to date. There are other cases, aside from those cited, that have changed to a metered basis, but their metering programs have been extended over a number of years. In many cases this has been done for financial reasons. While pumpage would be affected in a similar manner, the actual results cannot be so readily measured because of changed pumping equipment or consumption characteristics of the utility's customers.

In the cases cited in Table II an attempt has been made to compare pumpage data for periods both before and after metering that would be comparable and unaffected by other considerations. Pumpage data for the periods before and after were first placed on a per-customer basis to adjust for changes in number of customers connected. In most cases the ratio of kilowatt-hours energy rather than gallons pumped had to be used because reliable data on the latter were not available for the periods desired. If identical pumping equipment and source of supply remained in use, the number of kilowatt-hours energy used in pumpage should represent a reasonably accurate indication of total pumpage.

For the eight communities cited in Table II an average reduction of 44% resulted from the concentrated metering program carried out in a single year. This represents a decided reduction in pumpage and in such costs as are variable with pumpage. It represents a reduction that water departments supplying service on an unmetered basis could well afford to consider.

At the same time that meters were installed, a number of the communities installed a station meter for accurately recording total pumpage. By this means more reliable data can be secured on actual costs of

TABLE I. WATER CUSTOMERS METERED, DECEMBER 31, 1936*

Size	Annual Revenue Over	Number of Utilities	Percentage of Customers Metered			
			0–25%	26–50%	51–75%	76–100%
Class A	$100,000	19	—	1	1	17
Class B	25,000	42	1	1	1	39
Class C	10,000	20	—	2	—	18
Class D	5,000	90	6	5	4	75
Total		171	7	9	6	149

* Annual revenues from water utilities with less than $5,000 annual revenue amount to 3.7% of total revenue from all water utilities.

TABLE II. EFFECT OF INSTALLING WATER METERS ON TOTAL PUMPAGE

Community	Metering Program Concentrated in Year	Percent of Total Customers Metered	Annual Pumpage or Kwhs. Used*		Percent Pumpage Unaccounted For
			Amount†	Reduction Experienced	
A—6,300 Pop. Comparing—	1927				
1926		1.1%	128,398 gal.		
1928		93.5	64,110	51.1%	11.1%
1924–25–26		.8%	136,393 gal.		
1928–29–30		94.5	64,069	53.0%	14.3
B—2,200 Pop. Comparing—	1935				
1934		48.1%	219.0 kwhs.		
1936		94.7	104.5	52.3%	
1932–33–34		45.6%	181.9 kwhs.		
1936		94.7	104.5	42.5%	
C—1,500 Pop. Comparing—	1932				
1931		6.2%	156.3 kwhs.		
1933		100.0	91.2	41.7%	
1930–31		5.0%	152.9 kwhs.		
1933–34		100.0	97.8	36.0%	15.3%
D—1,400 Pop. Comparing—	1930				
1929		11.3%	440.1 kwhs.		
1931		98.5	238.3	45.9%	
1929‡		11.3%	440.1 kwhs.		
1931–32–33		98.6	230.1	47.7%	
E—850 Pop. Comparing—	1932				
1931		16.3%	169.6 kwhs.		
1933		95.4	66.9	60.6%	35.5%
1931‡		16.3%	169.6 kwhs.		
1933–34–35		94.1	79.1	53.3%	32.9%
F—750 Pop. Comparing—	1929				
1925–26–27§		6.3%	72,391 gal.		
1930–31–32		100.0	46,966	35.1%	
1925–26–27§		6.3%	77.1 kwhs.		
1930–31–32		100.0	53.2	31.0%	36.4%
G—650 Pop. Comparing—	1932				
1931		.0%	112.0 kwhs.		
1933		90.3	65.8	41.2%	
H—550 Pop. Comparing—	1929				
1928		.0%	143.6 kwhs.		
1930		44.6	82.6	42.5%	
1926–27–28		.0%	128.3 kwhs.		
1930–31–32		49.9	83.5	34.9%	

* This is on a "per-average-customer" basis; by "average" is meant a simple average of number reported at beginning and end of year.
† Total pumpage in gallons was used wherever the data were complete; otherwise the number of kilowatt-hours was used as an indication of total pumpage.
‡ Unreliable data on energy used in pumping for prior years.
§ Plant changed ownership in 1928; data for 1928 not complete.

pumping water. By comparing the total of meter readings and station meter register, the percentage of water unaccounted for can be accurately determined. Investigations can then be made of possible leaks on the system or unaccounted uses of water so as to reduce this percentage and operate the system in a more efficient manner.

In those cases where reliable pumpage data were available, the percentage of water unaccounted for, following metering of customers, has also been indicated. For the cases noted, the percentage varied between 11 and 36%. From a more complete study of other cases, this percentage has been found to vary on the average between 20 and 30%. Leaks in mains, water used for sprinkling streets, flushing sewers, settling trenches, testing fire-fighting equipment, actually fighting fires, and numerous other unmeasured uses all contribute to this percentage.

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The Splawn Committee Report on Relief for the Railroads

ON MARCH 17, 1938 President Roosevelt appointed a committee (hereinafter called the Splawn Committee) composed of Chairman Walter M. W. Splawn and Commissioners Joseph B. Eastman and Charles D. Mahaffie of the ICC "to bring forward a report, after consultation with the other members of the Commission, containing specific recommendations . . ." as to "what action, if any, can and should be taken by the Federal Government for the relief or improvement of existing conditions" in the railroad industry. This Committee submitted its report to the President on March 24, 1938, and with brief comments by the President and a number of high government officials and others it was submitted to Congress for consideration on April 11, 1938.[1]

This action by the President emphasizes the well-known fact that despite the serious national concern over the plight of the railroads in 1932, which resulted in organization of the National Transportation Committee,[2] little action of the kind suggested by that body has been taken either by the railroads or the Federal Government.[3] Despite enactment of the Emergency Railroad Transportation Act of 1933[4] and the work of the Federal Coordinator of Transportation in informing the nation concerning the factors responsible for unprofitable conditions in the railroad industry and the probable measures required to place the railroads and other transport agencies on an economic basis, our railroad system is still plagued with great fundamental ills. This fact together with the well-established tendency for business depressions to hit railroads hard because of their heavy fixed charges and a large proportion of overhead costs explains why public attention has again centered upon the railroads.[5] Organization of the Splawn Committee has raised again the hope that Con-

[1] Printed as *Immediate Relief for Railroads*, House Document No. 583, 75th Cong., 3d sess., 1938.

[2] *Report of the National Transportation Committee*, New York, Feb. 13, 1933.

[3] The Committee found that our railroad system must be preserved; that to this end government should no longer foster competition by promoting development of transportation agencies through subsidies; that parallel railroad lines should be eliminated by regional consolidations, "looking eventually to a single National system with regional divisions . . ."; that unprofitable railroad services should be replaced by cheaper alternative transport methods; that railroads should be permitted to operate competing services under proper regulation; that regulation by the Federal Government be extended to all competing transportation agencies; and that the railroads themselves adopt competing methods of transport, reduce expenses by unifying terminals and abandoning unnecessary services, and generally improve their transport methods and management. Some emergency legislation, including revision of bankruptcy procedure and repeal of the "recapture clause" of the Transportation Act of 1920, was recommended for immediate Congressional consideration.

[4] 48 Stat. 211, c. 91, June 16, 1933.

[5] After an encouraging traffic revival during 1935–7, freight carloadings began to decline early in October, 1937, and substantial decreases, averaging close to 20%, have been reported for every week during the last seven months compared with the same week during the preceding year. Together with a higher level of costs because of wage increases granted in 1937 and increased tax payments arising under the Social Security Act, and the lapsing of the emergency surcharges on December 31, 1936, this rapid decline in traffic has brought sharply reduced earnings and widespread deficits in recent months, rumors of numerous bankruptcies, and receiverships by the Soo Line on December 31, 1937, and the Erie Railroad on January 18, 1938. Approximately 200,000 railroad jobs have been lost during this period.

gress will effect fundamental changes in our railroad structure and in our regulatory and promotional set-up in the field of transportation, although the realists, looking back over the outcome of past attempts in this direction, may view the prospects less optimistically.

During the crisis of 1932 and succeeding years, chief reliance was placed on government loans through the RFC to inject life into the tottering railroads. With this precedent of a few years ago and the RFC ready to function immediately in any way authorized by Congress, it should not be a matter of surprise that the Splawn Committee stressed government loans for equipment and other purposes as the course for immediate action, nor that Congressional leaders are apparently finding this possibility more inviting for immediate consideration than other more fundamental measures, such as speeding reorganization procedure, settling the railway labor controversy, and re-establishing an authority to reorganize in a fundamental way our railroad structure.

The recommendations of the Splawn Committee are divided into two parts: (1) means of immediate relief and (2) the long-term program. With respect to the former it was recommended: that facilities should be provided, as under the NIRA, for the government to lend railroads up to $300,000,000 for purchase of railroad equipment, the equipment to be security for the advances; that for a period of 12 months the RFC be permitted to make certain loans to railroads without certification by the ICC that the applicant railroad "may reasonably be expected to meet its fixed charges without reduction thereof through judicial reorganization"; that land-grant rate reductions on government traffic be removed by amending existing statutes; and that opportunities for improvement of reorganization procedure under Section 77 of the Bankruptcy Act be considered, including "the establishment of one court to have charge of railroad reorganizations." It is significant to note that this Committee did not recommend guaranteeing fixed charges or direct subsidy to the railroads nor governmental pressure upon railway labor to accept cuts in wages and to liberalize rigid rules and regulations regarding conditions of railroad employment. However, the Committee noted that "a reduction . . . in railroad wages and salaries . . . would be a means of very definite and positive relief to the carriers" and stated that of the various proposals for strengthening the general credit of railroads by use of Government credit involving subsidy or otherwise, the proposal most worthy of consideration is that such credit be so used "by underwriting or by the guaranty of bonds issued in voluntary reorganization of capital structures designed to reduce the burden of fixed charges."

The recommended long-term program provides that a Federal Transportation Authority of three members be created for a period of two years, with power in the President to extend its life to five years "for the purpose of planning, encouraging, and promoting action by railroad companies with a view to eliminating the waste caused by the fact that the railroad system of the Nation is owned and operated by a large number of independent companies." The Authority would also be

> "directed to investigate the relative economy, and fitness in other respects, of rail carriers, motor carriers, and water carriers for transportation service, or any class thereof, in order that the use of each may be encouraged for purposes for which they are specially fitted, and discouraged for purposes for which they are not well fitted, and their joint and cooperative use be promoted, with a view to abating wasteful and destructive competition."

The Authority would be expected to report regarding needed legislation and the extent of government subsidy to any of the three major forms of transport and needed policy changes relating thereto. Roughly, the duties of this new Authority would be those which the Federal Coordinator of Transportation attempted to carry out between 1933–6, but with the important difference that this Authority would not be given power to order railroads to take action with respect to needed consolidation as was the Coordinator. To aid the Authority, amendments to Section 5 of the Interstate Commerce Act to broaden the powers of the ICC with respect to pooling and to permit approval of unifications by the Commission were recommended; also the Authority would be given power to intervene in consolidation proceedings before the ICC and upon its petition the Commission would be given power to require "coordinations," not covered by Section 5. The Committee also recommended enact-

ment of bills to provide regulation of domestic water and air carriers by the ICC, thus carrying out the general plan for coordinated regulation of all competing agencies sponsored by the Coordinator.

In submitting to Congress the report of the Splawn Committee, the President made only very brief comment and no definite recommendations as to a legislative program.[6] He did express himself as opposed to government subsidy to the railroads to enable them to meet interest payments on bonds or for other purposes, and government ownership and operation of the railroads. Moreover, he suggested that Congress study the operations and relations among the seven federal agencies dealing with transportation matters from the point of view of business efficiency.[7] His remarks in making this suggestion imply that the Administration may attempt during next session of Congress to establish a Department of Transportation, with its head a Cabinet official, to handle all executive functions but with quasi-judicial and quasi-legislative functions left with an independent Commission—a reorganized Interstate Commerce Commission.[8]

While accurate predictions cannot be made, present indications are that only a part of the program for immediate relief for the railroads has much chance of being enacted during this session of Congress. At a Washington meeting of Congressional leaders, representatives of the ICC, railroad managers, and representatives of railroad labor on April 26, 1938, an agreement was apparently reached to ask immediate Congressional consideration of (1) loans for equipment, (2) relaxation of credit requirements for loans by the RFC to the railroads, and (3) removal of land-grant reductions on government traffic. Loans to railroads agreeing to replace men laid off since October, 1937, with a proviso that loans for this purpose might include 25% for purchase of materials where necessary, were also advocated. However, establishment of a single court to handle railroad reorganization cases was not approved for immediate action because of the controversial nature of this proposal. The Chairmen of the Senate and House Committees on Interstate Commerce predicted immediate action by their committees on the elements agreed upon. Senator Burton K. Wheeler is reported to have said that his staff will continue to work on the long-range program this summer.[9]

With regard to the immediate railroad crisis, the Government might (1) attempt to prevent further bankruptcies or gravely weakened financial conditions by making emergency loans on a liberal basis or by other means or (2) turn the railroads adrift, to float or sink as they can. The former policy is the one likely to meet with the widest approval by public groups, since it will tend for a time to protect existing equities and may in effect subsidize both the railroad wage level and existing capital structures. Loans to sound railroads which are temporarily hard pressed because of the recent drop in traffic, recent wage increases, and increased material costs, are, of course, advisable, if the roads cannot obtain sufficient credit from the banks to tide them over or can obtain funds from the RFC at a lower net cost. If the railroads which have deferred equipment replacement and maintenance during the lean years since 1929 will take RFC funds for this purpose, these loans when judiciously used will undoubtedly improve railroad service for the future, increase the ability of certain railroads to compete with the trucks for traffic, and in some measure aid in restoration of general economic recovery.

However, real danger exists that economically weak roads or roads with top-heavy capital structures and loose, ineffective organizations and managements may be prevented by further government lending

[6] Considerable disappointment was expressed in the daily press, particularly in financial newspapers, over the failure of the President to make specific recommendations. In view of growing discontent arising from the frequent "must" lists presented to Congress by the President in recent years, the tenor of this comment may indicate the seriousness with which the railroad problem is regarded.

[7] The Bureau of Public Roads in the Department of Agriculture, the Bureau of Air Commerce, the Division of Transportation of the Bureau of Foreign and Domestic Commerce, the Lighthouse Service, the Bureau of Navigation and Marine Inspection, all in the Department of Commerce, the Interstate Commerce Commission, and the United States Maritime Commission.

[8] It is interesting to note that Secretary Morgenthau in his memorandum to the President urged him to "request Congress to create immediately a Department of Transportation with power to move vigorously to properly coordinate our national transportation facilities." (House Document No. 583, *op. cit.*, p. 55.)

[9] *New York Times*, April 27, 1938, p. 31. See also *Barron's*, vol. xviii, No. 19, May 9, 1938, p. 13.

from entering bankruptcy and reorganizing. While it must be admitted that financial reorganizations may be unjustly effected at the present low level of earnings in some cases, this condition has become so chronic that it may nevertheless be advisable to press for more and speedier railroad reorganizations. At any rate, since the pouring of hundreds of millions of dollars of government funds into the railroads since 1932 by RFC loans has not solved railroad difficulties, too great faith should not be placed in additional government loans as a remedy for railroad ills. It is high time for more fundamental action by the Government or a policy of allowing weak carriers to enter bankruptcy and reorganize. Even as a means for promoting economic recovery, with the current low levels of traffic and unutilized equipment, there is little assurance that railroads will avail themselves in any large measure of cheap government credit for acquiring new equipment. The recommended lending program cannot be much more than a palliative at best. At its worst, it can serve as a means of subsidizing rail investors and, to some extent, rail labor and postpone the day when drastic action will have to be taken. A policy of "muddling through" is likely to hasten the day when the railroads will again be operated, if not owned, by the government.

Creation of a single court to handle railroad reorganization cases and other changes in Section 77 of the Bankruptcy Act to reduce delays in effecting proper reorganizations would appear to be a forward step, if railroads needing financial reorganization are allowed to file applications for trusteeship. However, the likelihood that this possibility will not be given serious consideration by Congress this year may indicate little interest in reorganization as a means of solving certain well-known railroad difficulties. While involving an estimated $7,000,000 of additional revenue only, removal of land-grant reductions on government traffic seems a fair policy.

Lastly, the long-term program recommended by the Splawn Committee appears, with certain qualifications, sound policy. It was clearly a mistake to fail to extend or make permanent the office of Federal Coordinator of Transportation in 1936.[10] Judging from the similarity in duties to be accorded the new Federal Transportation Authority and those of the Coordinator, it is likely that much of the important work begun by Mr. Eastman as Coordinator will be carried on, especially the phases dealing with reduction of railroad operating costs by terminal unification, pooling of merchandise traffic, unified technical research, etc. Since the new Authority would have the benefit of the extensive studies of the Coordinator, its activities would doubtless be more promotional than those of the Coordinator. A serious organizational defect of the proposed Authority lies in the three-man board. The Authority should be headed by one man, possibly supported by an advisory council so selected as to represent interested functional groups. Where positive action and active leadership are necessary, a three-man board is likely to be ineffective. A serious structural defect in the new Authority lies in the failure to empower it to compel consolidation, unification, pooling, and other coordination. Failure of the railroads to cooperate with the Federal Coordinator of Transportation does not leave much to hope for under any plan of voluntary action, such as is embodied in this proposal. The temporary nature of the Authority might impede its functioning.

The report of the Splawn Committee is an interesting document. Above all, it demonstrates the truth that the nation's railroads cannot be overhauled in a day. Yet this should not blind us to the patent fact that only by recognizing squarely the fundamental weaknesses of our railroad system and planning all our public policies with these weaknesses in mind can a permanent solution to the often-recurring railroad problem be found. The time has arrived when the railroads should be told "to clean house" or the Government may be forced to take them over and perform the job itself.

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[10] The lapsing of this important agency is commonly attributed to opposition by railroad labor fearing loss of jobs under consolidation and rail managements fearing loss of competitive advantages from unification of terminals and loss of jobs from elimination of operating wastes.

Book Review Department

Urban Land

OUR CITIES: THEIR ROLE IN THE NATIONAL ECONOMY. (Report of the Urbanism Committee to the National Resources Committee.) *Washington: Government Printing Office, 1937. pp. xvi, 88. 50 cents (paper).*

This report summarizes the findings and recommendations of the Urbanism Committee, established by the National Resources Committee and headed by Clarence Dykstra, now President of the University of Wisconsin and formerly City Manager of Cincinnati. It contains a comprehensive summary of the static and dynamic aspects of urban society in this country, based mainly on secondary sources, and a set of general recommendations for coping with the complex of problems which is revealed.

Part I of the report discusses urbanism as a social and economic phenomenon, and establishes our cities in proper perspective in the national structure. The ecological and physical structure of a typical community is described. The process of urbanization is considered from the standpoint of the economic and technical developments which have conditioned it. Finally, the social, economic, and political problems of urban life and organization are defined.

Scholars in the fields of land economics and human ecology will discover few unfamiliar facts in the descriptive parts of this report. However, Part III, "Statements of General Policy and Recommendations," contains some provocative material of special significance because of the possibility that the policies urged may chart the course of future political action. Only a few of the recommendations can be listed here:

Condemnation awards under eminent domain should not include compensation for structures unfit for human use.

In order to lower the tax burden on the majority of households, and to encourage the rehabilitation of blighted areas, there should be a reduction in the rate of taxation on buildings and an increase of such rates on land.

Cities should adopt a more liberal policy of land acquisition facilitated by the liberalizing of state law and implemented with a broader interpretation of the term "public use."

Since the coordination of electric power systems tends to encourage a wider distribution of industry and population, a plan should be developed for coordination of all public and private generating, transmission, and distribution facilities.

A permanent National Resources Board should be established.

State laws should be enacted to provide urban planning authorities with control over the quantity and quality of real estate subdivisions.

Since the urban community is now a neglected field in governmental reporting, a division of urban information should be created in the Bureau of the Census to serve as a central clearing house for all urban statistics. Urban research should be carried on by a central agency within the proposed National Resources Board.

In general, the Urbanism Committee would seek solution for the problems of urban America not in a wholesale dispersion of industry and population, but rather in planned redevelopment and planned growth designed to relieve congestion and to create a better integrated and more decentralized urban pattern. RICHARD U. RATCLIFF

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Public Utilities

Sharfman, I. L. THE INTERSTATE COMMERCE COMMISSION. Part IV. *New York: Commonwealth Fund, 1937. pp. xii, 550. $4.50.*

Part IV of *The Interstate Commerce Commission* by Professor Sharfman completes a five-volume compendium which will inevitably find its place as a classic among economic and legal works. It is the definitive work in the field and as such should be in the hands of every serious student of transportation economics, utility regulation, or administrative law.

Part IV begins with an analysis of the personnel and organization of the Commission. While the formal background of the

individual Commissioners from 1887 to date has been carefully analyzed, the more important feature of their personalities has been completely passed over. This may be justified by the author's desire to stay completely within territory which can be evaluated in definite terms and where documentation is available. However, it is misleading to infer that he has succeeded in completely "disclosing the actual workings of . . . administrative organs" (see Foreword), unless he portrays the all-important interactions of the personalities of the administrators with one another, and with their external environment.

The comparatively recent passage of the Air Mail and Motor Carrier Acts accounts for the inconsistent placing of the general analysis of the Commission's functions under these acts within the section on organization. The treatment which the Motor Carrier Act receives is scant, even granting the briefness of its existence. Further, the description of the pressures on Congress which brought about the Motor Carrier Act are incompletely outlined in that no mention is made of railroad activities, originating both with management and labor, which must be credited with being the most powerful of those acting in favor of the legislation.

The second section of Part IV deals concisely and in detail with the technical procedure governing "the initiation, conduct, and disposition of proceedings" before the Commission. Due importance is given to the "liberal approach" toward procedure which "has enabled the Commission to investigate on the merits the real issues presented by complainants unhampered by technicalities of pleading, and at the same time to safeguard defendants against the determination of matters not properly in controversy and as to which adequate opportunity for defense has not been afforded" (pp. 184–5).

The third section is an impressive array of evidence of the unbelievably heavy pressure of "the administrative burden" resting on the shoulders of the Commissioners and their staff. The organization and procedural changes that have been proposed to relieve this burden are carefully reviewed. Professor Sharfman's conclusions are that "the fundamental need is to authorize the Commission so to restrict the matters coming forward for its consideration from divisions, individual commissioners, or boards of employees as to render feasible concentration upon the broader aspects of regulatory policy, with opportunity for full knowledge, adequate deliberation, and prompt disposition of the matters so considered" (p. 338).

The final 46 pages of Part IV bring together in concise and readable form the conclusions derived from the whole study. Professor Sharfman expresses the opinion that the Interstate Commerce Commission "type of regulatory structure . . . has constituted the most orderly and fruitful instrument available for avoiding the pitfalls of both unrestrained individual freedom and outright collective action" (p. 387). For the future he suggests that improvement of the administrative control may be effected "through increased emphasis on strong personnel; through more ample provision of financial support; through greater vigilance against executive interference with administrative independence . . . ; through more vigorous resistance to legislative recognition of special interests . . . " (p. 386).

One cannot help but feel, however, in spite of the excellence of the study and its conclusions, that it has been too subjective in its point of view. It has viewed the subject too much from the eyes of the legislature, the judiciary, and the administrative organ. There has been too little gathering of material or analysis with respect to administrative control as seen from the eyes of the industry controlled or in terms of its effect on that industry. That would seem to be at least half of the story. KENT T. HEALY

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Ruggles, C. O. ASPECTS OF THE ORGANIZATION, FUNCTIONS, AND FINANCING OF STATE PUBLIC UTILITY COMMISSIONS. (Vol. XXIV, No. 2 (April, 1937); Business Research Studies No. 18.) *Boston: Harvard University, Graduate School of Business Administration, 1937. pp. vi, 90. $1.00.*

In a recent publication of the Graduate School of Business Administration at Harvard, Professor Ruggles has brought together a very compact and comprehensive treatment of the historical background and the present status of public utility regulation through state public service commissions.

About 1/3 of the bulletin is devoted to a consideration of the commissioners and their staffs. Selection, training, compensation,

tenure, and removals are covered very adequately both for the commissioners and, in part, for the staff members.

A further major heading has to do with the sources of funds for the programs of the utility commissions. The tendency to have recourse to assessments upon utilities for regulatory purposes is noted. All but the last 20 pages consist of strictly factual material which is well organized, readily accessible, and unusually well documented.

The final chapter entitled "General Summary and Conclusions" has to do with prevailing tendencies of regulation and an evaluation of major aspects of the findings as set forth in the earlier pages where critical comments were studiously avoided. For the general reader Professor Ruggles has brought together here a number of criticisms that look toward improvement of utility regulation in the United States. Among other things he points to the inevitability of increasing federal regulation and urges that this develop along decentralized lines so far as possible. He makes a number of constructive suggestions with respect to the changes desirable in the name of building up a group of professional commissioners. For example, he would do away with residential restrictions. He urges appointment rather than election. He would provide longer terms for the position of commissioner and guarantee tenure through removal only for cause. Higher salaries are proposed. Special emphasis is placed upon the undesirability of permitting commissioners to be politically active. The necessity of more systematic research on the part of commissions is urged. An advisory council is finally recommended upon which would be represented the various parties at interest.

In the interest of more adequate financing the extension of the system of assessing utilities—that is, the consumers rather than the taxpayers—for the costs of regulation is proposed as the desirable policy.

Pertinent observations are made on the subject of interference with management. These are supplemented by the prediction that an extension of regulation is probably in the long run desirable.

The importance of a more thorough-going accounting control combined with the setting up of unit costs and other yardstick devices is in line with the justification of the extension of regulatory practices, as is the recommendation for fuller and more standardized reporting on operations from the company to the commission and from the commission to the public.

Finally, Mr. Ruggles takes the eminently sound position with respect to public operation that the public's interest is primarily in obtaining utility services which will give it the "most satisfactory service at the lowest possible cost." He then urges that regulation is equally necessary whether the utilities are under private or public management and operation. It would have been interesting if the author had seen fit to indicate whether the same type of regulation is called for when one has to do with a private concern primarily interested in profit or a public concern in whose management profits are of secondary importance, if not entirely eliminated.

Mr. Ruggles closes his summary with the question as to whether regulation of utilities should not be given a fair chance before it is condemned, which would warrant the deduction that present-day regulatory procedures have proved far from successful. This question is highly appropriate and should be asked in season and out by those interested in improving the control of public utility enterprises.

The present reviewer finds Professor Ruggles' contribution in this monograph on the factual side distinctly valuable and usable. When it comes to the matter of criticism, the author has made a number of sound and constructive suggestions. His work will serve a useful purpose both as an introduction for those who wish a condensed, bird's-eye view of this field and for those who desire a handy reference work on the subject covered. If the reviewer may be permitted a single suggestion it would be that, in the discussion of the jurisdiction of commissions, some attention might well have been given to the authority of the commissions to make valuations for rate-making purposes and the practices of the commissions when such authority is granted. This phase of regulation deserves comment and criticism at every turn of the road because, in the mind of the writer, the possibility of successful utility regulation in the present or the future will depend upon some workable scheme of determining fair value for rate-making purposes.

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Public Administration

Robson, William A., editor. PUBLIC ENTERPRISE: DEVELOPMENTS IN SOCIAL OWNERSHIP AND CONTROL IN GREAT BRITAIN. *London: George Allen & Unwin, Ltd., 1937.* (Distributed in the United States by the University of Chicago Press.) *pp. 416. $3.00.*

Thurston, John. GOVERNMENT PROPRIETARY CORPORATIONS IN THE ENGLISH-SPEAKING COUNTRIES. *Cambridge: Harvard University Press, 1937. pp. xii, 294. $3.50.*

These two volumes deal with a common subject. Though they are not co-extensive, the subject is very timely. A common criticism of publicly owned or operated enterprises, is that, in the past, government agencies have not been organized to render business services. This is to be expected of any government organized on the theory of *laissez faire*. Under a government so organized, public services usually are administered by departmental bureaus or boards, which are bound by a rigid system of routine and control, whose accounts are mixed with those of departments organized for other purposes, whose finances and operating policies are controlled by politically-minded legislative or executive authorities, and which, in general, are not designed to be efficient business agencies.

These defects must be overcome if government is to fulfill successfully the entrepreneurial functions which are falling to its lot in modern times. Recent experiments with public authorities or corporations are of greatest importance. Though the powers and organization of these bodies vary widely, they are characterized by a substantial degree of, or even complete, financial autonomy, as well as by administrative unity, flexibility, and continuity.

But, though the public concern seems to be a better means of securing business efficiency than does the ordinary department, it is by no means a perfect one. This is abundantly shown by the analysis in both the present volumes, which give valuable information on the administration of public concerns. The Robson book consists of essays by nine separate authors on important socialized undertakings in England. The student of public utilities will be especially interested in the discussion of the Port of London Authority, the British Broadcasting Corporation, the Central Electricity Board, and the London Passenger Transport Board. The student of land economics will be attracted to the studies of the Forestry Commission and the Agricultural Marketing Boards. Editor Robson's general conclusions on public service boards in England are a good short treatment of the subject. It must be said that the essays vary in quality and comprehensiveness; probably the best of the lot is that on the Port of London Authority by an American, Mr. Lincoln Gordon.

The Thurston book is far more systematic and comprehensive in scope than the Robson volume, for it pertains to American, Canadian, and Australian experience as well as to the English. It does not attempt to appraise the success or failure of individual enterprises, but rather makes a functional analysis of public corporations engaged in supplying economic services. It treats at length, and with painstaking detail, the legal status, the finances, the management and administration, and the public control of government corporations. On the whole it is interestingly written, and is a good job. Dr. Thurston wisely attempts to confine himself to the sphere of administration within the boundaries of policies laid down by legislative or executive authorities; necessarily, however, he discusses some questions of policy, such as the difference between governmental and commercial or proprietary functions, and the nature of costs to be covered by the enterprise so as to make it self-sustaining, no more or no less. Dr. Thurston advocates a policy of making government corporations self-sustaining (so as to cover all costs, including interest and a fair share of taxes) and self-amortizing as well. This is now quite common with those who insist on placing government enterprises on a "business basis." It seems to the reviewer, however, that there is a dangerous rigidity to this notion. Granting the desirability of an accounting system which clearly shows the true costs of service, in so far as they can be determined, it yet may often be economically desirable, and sometimes necessary, to subsidize certain interest groups or consumers, as, for instance, in the case of low-rent housing. Though this, I think, is recognized by Dr. Thurston, he has a horror of raids by special-interest groups which makes him lean over backward in favor of financial self-sufficiency.

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